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No. 84-1974

In The
Supreme Court of the United States
October Term, 1985

JIMMY C. ROSE, WARDEN,

Petitioner,

vs.

STANLEY BARHAM CLARK,

Respondent.

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS FOR THE SIXTH CIRCUIT

JOINT APPENDIX

W. J. Michael Cody
Attorney General of Tennessee
Counsel of Record
Kymberly Lynn Anne Hattawa,
Assistant Attorney General
450 James Robertson Parkway
Nashville, TN 37219-5025
Phone: (615) 741-1613
Counsel for Petitioner

Scott Daniel
DANIEL, BURTON & THOMAS
401 West Main Street
P. O. Box 960
Murfreesboro, TN 37130
Phone: (615) 893-8300
Counsel for Respondent

PETITION FOR WRIT OF CERTIORARI FILED MAY 30, 1985
CERTIORARI GRANTED OCTOBER 7, 1985

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PLEADINGS and MINUTES ENTRIES

[Indictment filed February 21, 1979]

TRUE BILL

State of Tennessee, Rutherford County
Circuit Court February Term, 1979

The Grand Jurors for the State of Tennessee, duly elected, sworn and charged to inquire for the body of the County of Rutherford and State aforesaid, upon their oaths aforesaid present, that heretofore, to wit: on the 30th day of December, 1978, in said County and State, one Stanley Clark, with force and arms, unlawfully, feloniously, willfully, delibertly [sic], premeditatedly and maliciously, did make an assault upon the body of one Charles Browning and him the said Charles Browning he the said Stanley Clark then and there did unlawfully, feloniously, delibertly [sic], premeditatedly, and of his malice aforethought, kill and murder, against the peace and dignity of the State.

SECOND COUNT:

And the Grand Jurors aforesaid, upon their oath aforesaid, do futher [sic] present: That on the day and date aforesaid, in the county and state aforesaid, the said Stanley Clark, with force and arms, unlawfully, feloniously, willfully, delibertly [sic], premeditatedly and maliciously, did make an assault upon the body of one Joy Faulk, and and [sic] her the said Joy Faulk he the said Stanley Clark then and there did unlawfully, feloniously,

willfully, delibertedly [sic], premeditatedly and of his malice aforethought, kill and murder against the peace and dignity of the State.

/s/ Guy R. Dotson
Attorney General

[Minutes of July 16-20, 1979]

IN THE CIRCUIT COURT FOR RUTHERFORD COUNTY, TENNESSEE

EIGHTH JUDICIAL DISTRICT AT MURFREEBORO

[Caption Omitted]

ORDER

This day comes the Attorney General for the State and the defendant, STANLEY BARHAM CLARK, in proper person and by counsel, SCOTT DANIEL and D. C. DANIEL. When to try the above cause, there comes a Jury of good and lawful persons, to-wit: EDWARD FITZPATRICK, DOYLE WILSON, BILL YEARWOOD, EDWIN TOMMY BIDDIX, MAMIE C. TOMBERLAIN, BILLY R. THOMAS, SARA KELTON, LISA MARIE NICKENS, PARKS HARMAN, WILBUR FRANCIS BREYFOGLE, NORMAN F. COLLINSON, MARGARET ANN PIRMM, MAXINE HENDERSON, 1st Alternate, and RONALD W. CORZATT, 2nd Alternate, who were sworn well and truly to try the issues of traverse herein joined, a true deliverance make and a true verdict render according to the law and the evidence. Thereupon the defendant being arraigned at the bar of the Court and charged on the bill of the indictment pled NOT GUILTY to same and for his trial put himself upon the Country and the Attorney General doth the like.

After the charge was given to the Jury and before said Jury retired to deliberate, for good cause shown, and by agreement of counsel for the defendant and the Attorney General, the alternate jurors in this cause, MAXINE HENDERSON, 1st Alternate and RONALD W. CORZATT, 2nd Alternate, were hereby excused from further service in this cause and participated no further.

After due deliberation the jury returned into open Court, and upon their oaths do say: WE, THE JURY, FIND THE DEFENDANT, STANLEY BARHAM CLARK, GUILTY OF MURDER, SECOND DEGREE, AS TO THE CHARGE IN THE INDICTMENT OF THE MURDER OF CHARLES BROWNING, AND FIX HIS PUNISHMENT AT IMPRISONMENT IN THE STATE PENITENTIARY FOR TEN (10) YEARS.

WE, THE JURY, FIND THE DEFENDANT, STANLEY BARHAM CLARK, GUILTY OF MURDER, FIRST (1st) DEGREE, AS TO THE CHARGE ON THE INDICTMENT OF THE MURDER OF JOY FAULK.

It being the opinion of this Court that the evidence in this cause of the first degree murder of Joy Faulk did not warrant consideration by the jury of whether or not capital punishment should be imposed this was announced to counsel, and, without objection, the jury was discharged and sentence set at life imprisonment.

IT IS, THEREFORE, THE JUDGMENT of the Court that the defendant is guilty of murder, second (2nd) degree, as to the charge in the indictment of the murder of Charles Browning, as found by the jury, and that for said offense he be committed to the State Penitentiary for a period of ten (10) years; that he pay the costs of

this prosecution for which execution will issue; and that he be rendered infamous, incapable of exercising the elective franchise or of holding public office.

IS IT, THEREFORE, THE JUDGMENT of the Court that the defendant is guilty of murder, first (1st) degree, as found by the Jury, as charged under the second count of the indictment, and that for said offense he be committed to the State Penitentiary for life imprisonment: that he pay the costs of this prosecution for which execution will issue; and that he be rendered infamous, incapable of exercising the elective franchise or of holding public office.

To the verdicts of the jury and the judgments of the Court the defendant excepts and moves that he be allowed to file motion for a new trial, which motion the Court is pleased to allow, and the defendant is allowed thirty (30) days within which to prepare and file his motion for a new trial.

This Court reserves the right to determine whether the sentences are to be consecutive or concurrent and will make that decision upon ruling upon the defendant's motion for a new trial.

ENTER:

/s/ William R. Russell Judge

OPENING STATEMENT

By General Dotson:

[5] * * * Then we have to prove to your satisfaction beyond a reasonable doubt what are called the elements of murder in the first degree. The Court will instruct you what murder is, something to the effect that if any man of sound memory kills another person with malice either expressed or implied it shall be murder. Then the Court I feel certain will instruct you that murder in the first degree is when someone kills someone by means of lying in wait or by any other willful, deliberate, malicious, premeditated killing.

It is our contention that these two homicides were deliberate where the statute says any deliberate killing, and that is that it is willful. And the Court will instruct you I believe that willful means of [6] purpose, that is that the acts that took the life of the deceased were intended for that purpose. Malicious means of evil intent, a heart unconcerned about the welfare of others, being a malignant feeling. Premeditated means that it was preplanned or thought of before it was done. And deliberate refers back to purpose; deliberate is a cool purpose.

* * *

[9] The Court will instruct you what temporary insanity is and I believe it is something to the effect that at the time of the offense a man has a mental illness or defect such that it keeps him from understanding or appreciating the wrongfulness of his act he committed or it kept him from conducting himself in such a way as not to violate the law that he violated. The Court will give you what I think is a clear definition of mental illness but it basically

means that he didn't understand that it was wrong or that he couldn't cause himself to follow the law that was in existence that he is claimed to have violated.

Now, if the Defendant is successful in those two defenses you are to acquit him. But in making a determination as to whether he was or was not temporarily insane you have a right to observe the Defendant today and you had a right to observe the Defendant yesterday—and I'm sure you saw him taking notes. You have a right to listen to all of the witnesses that have testified, not only experts but people who have known him a lot longer than experts. His expert witnesses are going to say that for a period of four or five hours one night he was temporarily insane. But they did not see him the next day or the next week, they waited five to six months before they saw him. That is going to be the Defendant's insanity plea, that some fellow can look at a man based on what he says and other evidence and [10] say, yes, he was temporarily insane.

OPENING STATEMENT

By Mr. Scott Daniel:

[24] We will further show you that even if, as unlikely as it might be, the Prosecutor were able to establish to your satisfaction that Stanley Clark did commit the acts alleged, we will show you by psychiatric experts that Stanley Clark has no recollection of participating in any act as is charged against him and that even if the State should submit evidence to establish that the acts were committed, then the evidence will show that Stanley Clark has total amnesia of any knowledge of the deaths of Joy Faulk or Charles Browning and that due to his mental condition he

could not have possessed the mental capacity required to establish his guilt.

The accused, Stanley Clark, carries with him something more valuable than any amount of money—that is the presumption of innocence. By his plea of not guilty he has denied the charges against him. The law presumes him to be innocent. Presumption is not a mere legal phrase, something to be spoken and forgotten, but it is a clear command of the law. It is fundamental to our principles of democracy and fair play and it exists for the protection of all—for you and for me and for the accused.

As you weigh the facts brought out at this trial, bear in mind that on the side of Stanley Clark is the additional weight of the presumption of his innocence.

TESTIMONY OF DEPUTY SHERIFF DONALD MOOREHEAD

Direct Examination

By General Dotson:

[33] * * * Q. What did you see upon arriving at the scene that night? A. I saw a red Ford pickup truck parked approximately right in here. When I pulled around this side to shine my headlights of my patrol car in the truck I saw the door open. And when I got out I found two bodies lying in the truck.

[34] * * * Q. What was it you observed when you arrived at the scene? A. Red Ford Pickup truck with a driver's door open and two subjects lying in the truck.

Q. Describe the position that the driver of that truck was in. A. The driver was slumped over toward the right-

hand side lying completely on his side just about. The female subject was on the passenger's side. Her head was lying back against the right side of the cab with her head fallen back.

• • •

[47] • • • Q. Describe the seating facilities inside the truck, please, sir. A. There was two bucket seats in the truck.

• • •

[51] • • • Q. After you left the scene where if anywhere did you go? A. We patrolled the immediate area around Threet Road first.

Q. And then where if anyplace did you go? A. I went towards Stanley Clark's house.

Q. In what direction did you travel to get to Stanley Clark's house from where you were at the scene or after you had completed the patrolling of the Threet area? A. I went down Rock Springs Road to 231S and turned right off Rock Spring Road and went to Fosterville.

Q. Where in Fosterville if anyplace did you go? A. I went through Fosterville and turned left and went on down Fosterville Road.

Q. Where did you go then? A. I went by Stanley Clark's house.

Q. How far did you go by Stanley Clark's house? [52] A. About five hundred feet, something like that.

Q. What did you do after going approximately five hundred feet past his house? A. I turned around and headed back towards his house.

Q. For what reason? A. Because I saw some headlights coming from behind me.

Q. And you thought at that time those belonged to whom?

MR. DANIEL: Objection.

THE COURT: Don't lead.

Q. Why did you turn around? A. I just wasn't sure who the headlights belonged to and I wanted to find out.

Q. What happened when you turned around? In what direction were you going then? A. I was going back towards Fosterville on the Fosterville Road.

Q. What if anything did you see then? A. As we got in front of Stanley Clark's house I observed a brown Ford pickup truck as we met him.

Q. What if anything was the pickup truck doing? [53] A. At that time the pickup truck, when we met it, was slowing down.

Q. How close was that to Stanley Clark's house? A. It was exactly—just about exactly in front of his house.

Q. At what rate of speed was the truck going at that time? A. It was slowing—maybe around five miles an hour.

Q. What if anything did you do that that time? A. At that time I put on my emergency equipment, blue lights and siren, and turned around.

Q. What if anything did the truck that you had observed do? A. The truck sped off in the opposite direction from us.

Q. Where did you turn your vehicle around. A. In Stanley Clark's driveway.

Q. What did you do then? A. We proceeded to pursue the truck.

Q. For what distance? A. We pursued it approximately a mile.

Q. Describe the route that you took, please, sir.

[54] A. We went down Fosterville Road towards Bell Buckle Road and went across Bell Buckle Road bearing to the left and back around to the right on Short Creek Road.

Q. At what rate of speed were you going during this time? A. We were traveling approximately fifty or sixty miles an hour.

Q. Did the vehicle you were following stop at the intersection of Bell Buckle Road? A. No, he didn't.

Q. Is there a stop sign at that intersection? A. Yes, there is a stop sign there.

Q. Did he give a turn signal indicating which way he was turning? A. No, sir, he didn't.

Q. After he turned on to Bell Buckle Road in what direction did he go? A. As he turned on Bell Buckle he turned left which would carry you back towards Christiana.

Q. In what direction did he go then? A. He turned right on to Short Creek Road.

Q. Describe that road. A. Short Creek Road bears off to the right approximately sixty yards from Fosterville Road, which is a small gravel road.

[55] Q. How far did you pursue him? A. From there we went approximately three-quarters of a mile.

Q. What if anything did he do then? A. As we got in behind him closer he turned into a driveway at the residence of Jerry Smotherman.

Q. Describe the truck that stopped. A. The truck that stopped was a brown Ford pickup truck.

Q. How would you describe the color again, please, sir? A. A brownish color.

Q. What color? A. Brown.

Q. What other word did you use? A. Brownish.

Q. What person removed himself from that vehicle? A. Stanley Clark got out himself.

[56] * * * Q. When you turn off of 231 going to Christiana, how far is it from that intersection to the intersection going to Fosterville on 231S? A. Do you mean on 231 from Christiana? Q. Yes, sir. A. Approximately four miles.

Q. How far is it from the intersection of 231 and Christiana Road to the town of Christiana? A. I think it is approximately two miles.

Q. Approximately how far is it from the intersection of Fosterville Road and 231 to Fosterville? A. It's about a mile.

* * *

[61] * * * Q. Did the Defendant, Stanley Clark, get out of his truck? A. No, sir, he didn't.

Q. Did you have any conversation with him at that point? [62] A. We told him to get out of the truck.

Q. After telling him to get out of the truck did he? A. No, sir, he didn't.

* * * Q. What did the Defendant do then, after you told him to get out the second time? A. After the second time, he stepped out of the truck.

Q. Without stating what was said, did you [63] have conversation with him then? A. All I did was ask him his name.

Q. How far is it from Fosterville to Stanley Clark's house, please, sir? A. It is approximately three, three and one-half miles.

Q. Approximately how far is it from Stanley Clark's house, where you first pursued him, to where he stopped on Short Creek Road? A. It is approximately a mile.

Q. At what rate of speed were you going during the time that you were following him? A. When we pursued him we were averaging around fifty to sixty miles an hour.

Q. Did you keep him in sight the entire time. A. No.

Q. When did you lose sight of him? A. We lost him back around through this curve, right in here.

Q. How long was it before you picked up sight of him again? A. Anywhere from five to ten seconds.

[64] * * * Q. Mr. Moorehead, prior to your going to the scene had you been on duty that night? A. Yes, sir.

Q. What was your shift of work that day? A. My shift was from 3:00 to 11:30 at that time, I believe.

Q. Had you had occasion to witness or see anything unusual, not at the time you saw it but unusual in light of your later investigation, earlier that night? A. Yes, sir, I did.

Q. What was that, please, sir. [65] A. As I was enroute to go eat—

Q. On what road? A. On Walnut Grove Road—I turned left on Walnut Grove Road off of Midland Road—I met a red Ford pickup truck and a brown Ford pickup truck traveling at a fairly fast rate of speed and the brown one was following the red one and was very close to the red Ford pickup truck.

Q. At what time of day was this? A. It was around 9:00 o'clock or a little after.

Q. Did you later see a truck that you identified or you thought was the same truck? A. Yes, sir, I did.

MR. DANIEL: I object.

THE COURT: Overrule the objection.

Q. Where did you see that truck? A. Do you mean the red one?

Q. Yes, the red one. A. The red one was at the shooting on Threet Road.

Q. Did you later see one similar to the truck that was following it? A. Yes, sir, it was Stanley Clark's truck.

Q. What time was it that you saw the red truck and the brownish truck the first time? [66] A. You mean when I was on Walnut Grove Road the first time?

Q. Yes, Sir. A. It was around 12 minutes after 9:00 when I first saw it.

Q. How close was the brownish or the brown truck to the red truck? A. Not more than five or six feet behind it.

Q. Describe the Walnut Grove Road on which you saw these two trucks? A. The Walnut Grove Road turns left off Midland Road and it is a gravel road that winds around.

Q. What rate of speed were they going? A. Anywhere from forty to fifty miles an hour.

Q. Were you able to identify the passengers in those vehicles? A. No, sir, I was not.

Q. Could you tell how many people were in the first truck or the second truck? A. No, sir.

Q. When was the next time you saw the red truck? A. The next time I saw the red truck was [67] when I arrived at the shooting on Threet Road.

Q. How far is that from the Walnut Grove Road? A. It is approximately five miles.

Q. Is it in the same general vicinity? A. Yes, sir.

Q. What about the next time you saw the brownish truck? A. The next time I saw the brownish truck it was on Fosterville Road.

Q. And that was at what time? A. It was approximately 11:30, I believe.

Q. It was sometime after 11:00, closer to 12:00? A. Yes, sir. I would have to check my notes to make sure on that.

Q. Who did you determine to be the driver of the brown or brownish truck you are talking about once you stopped it on Short Creek Road? A. Stanley Clark.

Redirect Examination

By General Dotson:

[92] * * * Q. Officer Moorehead, would you refer to report No. 3 and in looking at that would you tell us from your report what time you stopped Stanley Clark in Jerry Smotherman's driveway? A. It was 12:40.

Q. And what time is that so the jury will understand it, please, sir. A. That was 20 minutes until 1:00 that night.

Q. So the actual stop was at 12:40 or 20 minutes until 1:00? A. 12:40, yes.

Q. Now, referring to report No. 4 where you were questioned if you had ever mentioned having seen the two trucks before, will you state what the substance of that report is, please, sir?

[93] * * * Q. Read that report in its entirety, please, sir. A. "Officer Moorehead was enroute to go 10-10 subject to call. While headed down Midland Road I turned east on to Walnut Grove Road at about 21:11 hours on the 30th of December. I observed a red pickup truck headed west on Walnut Grove Road with a brown pickup truck following very close behind it. They were traveling about forty miles an hour. Car No. 3 was 10-10 at 21:12. Officer Moorehead was 10-8 in service, 21:42, and proceeded back. At 12:12 car No. 3 was dispatched to a shooting on Threet Road which is about ten miles from where I observed the two pickup trucks.

Q. Now, you stated at about 21:11 on the 30th you observed a pickup truck with a brown pickup truck following it. What is 21:11? A. It is 11 minutes after 9:00.

Q. And you were back in service at what time, please, sir? What is 21:42? A. That is 42 minutes after 9:00.

Q. And then you received a call to go to [94] Threet Road at 12 minutes after 10:00? A. Yes, sir.

Q. How long have you lived on Walnut Grove Road? A. I have lived there for a little over a year.

Q. Again, what distance from where you saw the trucks is it to the place where this homicide took place? A. It is about ten miles from where I saw the pickup trucks.

TESTIMONY OF CRIMINAL INVESTIGATOR RANDY GALLOWAY

Direct Examination

By General Dotson:

[106] * * * Q. What if anything did you observe at Threet Road? A. When I arrived on the scene at Threet Road I observed the ambulance attendant putting the body of Charles Browning into an ambulance. I went on up to the Ford pickup truck that I was directed to by David Grisham and I observed the body of Joy Faulk sitting in the passenger's seat of the Ford pickup truck.

Q. Did you determine what her condition was at that time, please, sir? A. Yes, sir, it appeared to me she had suffered from bullet wounds in the face.

Q. Did you determine at that time whether she was alive or dead? A. She appeared to me to be dead, sir.

[107] * * * Q. On the night in question was there a vehicle parked in front of the red pickup truck? A. Yes, there was.

Q. What type vehicle was it? A. It was a white Chevrolet Monte Carlo.

* * * Q. Do you recall whether the lights were on or off on the pickup truck? A. The lights were on on the pickup truck.

Q. Do you recall whether the inside light was on or off? A. It was off.

[108] * * * Q. Was there any type on-the-scene investigation made by you or anyone else at that time, please, sir? A. Yes, sir, there was.

Q. Relate to the Court and this jury what that was, please, sir. A. I viewed the body of the female that was in the truck. I did a search of the cab of the truck as best I could without disturbing the body.

Q. What if anything did you find inside the cab of the truck? A. I found a spent .25-caliber shell and a small caliber bullet.

Q. Where inside the truck did you find it, please, sir? A. I found the spent shell on the left side of the passenger's seat just between Mrs. Faulk's left hand and left leg.

Q. You found the spent casing where? [109] A. On the left side of the passenger's seat just between Mrs. Faulk's left hand and left leg.

* * *

[112] * * * Q. I will ask you if you along with anyone else made a further investigation of the area, particularly the inside of the truck, at that time? A. Yes, sir, I did.

Q. What if anything was found by you inside that truck? A. I found a small caliber copper-jacketed bullet.

* * *

[116] * * * Q. At any time did you have an occasion to talk to a person by the name of Terry Hill? A. Yes, sir, I talked to Terry Hill on January 3rd.

Q. As a result of talking to Terry Hill where [117] did you go? A. I went out to a portion of Rutherford County called the Buckeye Bottom Road.

Q. What was the purpose of you going to Buckeye Bottom Road? A. To recover some .25 spent cartridges.

Q. Were there any recovered, please sir? A. Yes, there were.

Q. I will hand you this package and ask you if you can identify that, please, sir? A. Yes, sir, this is a packet that the spent .25-caliber shells were placed in.

Q. What does that reflect as being the brand that you recovered? A. That's five Winchester Western .25 automatic shell casings; three Remington Peters .25 automatic shell casings; one norma .25 automatic shell casing.

• • •

[120] • • • Q. Mr. Galloway, prior to your going out on the 3rd to look at these casings, was it brought to your attention that some other casings were found? A. Yes, sir, it was.

Q. And where were they found, please, sir? A. In the pickup truck belonging to the victim Charles Browning.

Q. What was done with the pickup truck after the investigation was made there on the scene? A. It was towed to the City Police Department here in Murfreesboro and put under the shed.

Q. Then when was the truck examined next? A. On the morning of the 31st.

Q. Do you know who made that examination? A. Tom Carmooch of the TBI, Detective David Grisham, myself, and Detective Eddie Peel.

Q. Had Mr. Peel made his investigation prior to you making yours? A. Yes, sir, he had.

[121] Q. What if anything did he turn over to you or did you see in his presence as a result of the investigation? A. Three .25-caliber shells.

[122] • • • Q. After talking with Terry Hill did you form an opinion—without stating what it was—as to what type weapon was used in the homicide? A. Yes, sir, I did.

Q. First you knew it was what type to be sure of? A. A .25 automatic.

Q. Did you determine or have an idea or form an opinion as to what brand it was? A. Yes, sir, I did.

Q. And what was that, please, sir? A. A Targa Excam.

• • •

[127] • • • Q. Describe the weapon that you took to them [Tennessee Bureau of Investigation Crime Laboratory] on the 19th [January 19]. A. It was a Targa Excam .25 automatic.

Q. How did you come to be in possession of that weapon? A. I picked it up at the intersection of Fosterville and Bell Buckle Roads in Christiana.

Q. When did you do that? A. On the 18th of January.

Q. How did you come about being in possession of knowledge or information leading you to go to that area? A. I went there as a result of a call at the Sheriff's Department.

Q. An anonymous or a known caller? A. An anonymous call.

Q. When did the Sheriff's Department receive this call? A. It came to the sheriff's dispatcher at 1:15 p.m. on the 18th.

Q. What did you do that day then? A. I immediately went out to that area.

Q. Did the caller advise you where you could expect to find this gun? A. Yes, sir.

[128] Q. Did you in fact find it where you were told that you would find it? A. Yes, sir, I did.

Q. Where did you say you found this Targa Excam .25 automatic pistol, please, sir? A. At the base of the road sign at the intersection of Fosterville Road and Bell Buckle Road.

• • •

[132] • • • Q. Mr. Galloway, how far is the place where you found this gun from the home of Stanley Clark? A I would estimate three-quarters of a mile, sir.

Q. Would this be the path that you would take going from Stanley Clark's house to Jerry Smotherman's house if you went in the nearest, shortest, most direct route? A. Yes, sir, it is.

• • •

[134] • • • Q. What condition was the pistol in when you found it, please, sir? A. It was rusty. The hammer was back in the cocked position.

• • •

[137] • • • Q. Where was Charlie Browning shot, please, sir? A. He was shot in the left side of the head, approximately in this area.

Q. Where was the victim Joy Faulk shot? A. She was shot in the left cheek about here and through the left eye and through the left shoulder.

[138] * * * Q. Did you form an opinion based on what you saw that night as to the distance the aggressor or the shooter was when Charlie was shot and when Joy was shot? A. Yes, sir, I did.

Q. What range would you say the fellow was? A. I would say from Charlie Browning, six to eight inches probably; Joy Faulk, no farther than eighteen inches.

Q. How could you determine that, please, sir? A. From the size and the area on each victim's face covered by what is called powder burns.

Q. Were powder burns present on both bodies- A. Yes, sir, they were.

Cross Examination

By Mr. Scott Daniel:

[141] * * * Q. All right. Now, I understand that at the scene itself I believe you say there were how many actual bullets, that is spent cartridges or bullets, found? A. Are you talking about the projectile part of the shell, the bullet?

Q. Yes. A. One.

Q. And that was found where? A. It was found on the passenger's side of the truck down in the floorboard just where the door meets the floorboard part.

Q. Now, you found I believe two others and there were a total of four that you found that had been either in the truck or were in the bodies; is that correct? A. To

say positive, sir, I wasn't there when they were taken out of the bodies so I can't say for sure.

Q. All right. How many bullets did you recover that you understood had been fired from the same weapon that caused the deaths? A. I believe there were four.

• • • •

[147] • • • Q. Now, you indicated that the gun you found out on the road was located I believe at this point on Fosterville Road; is that correct? A. Yes, sir, at the corner of Fosterville and Bell Buckle Road.

Q. Is it true or not that from here, Mr. Clark's driveway, there is a bend in the road which would have obscured the vision of this area? A. Yes, sir, I believe there are two bends in the road before you get to that area.

Q. So there is no way to tell from back here, see that sign or see that area of the road from back at Mr. Clark's house? A. No, sir, there is no way to see it if you are standing in the road or standing at his house.

• • • •

[149] • • • Q. You gave an estimate of the distance from Mr. Clark's house to this stop sign or road sign where you found the pistol. Did you have an estimate of distance from there over to Smotherman's? Have you clocked that distance? A. I haven't clocked that distance. You can see Mr. Smotherman's house from that point.

Q. You can see Mr. Smotherman's house from where you found the pistol? A. Yes, sir, at the time I found it you could see his house. With the leaves and the foliage on the trees now you maybe can't see it but at that time you could.

Q. In the wintertime when this happened you could see from this point over to Mr. Smotherman's house? A. Yes, you could see his house.

Q. It's not all that far in other words? A. No, sir.

Q. Now, do you remember or have you had occasion to determine how many shells if any there were in the gun at the time it was found? A. I understand from the lab there was two [150] live rounds left in the gun.

Q. Two live rounds left in it? A. (Witness nods in the affirmative.)

* * * Q. You said you found powder burns on both of the bodies, both Mrs. Faulk and Mr. Browning; is that correct? A. Yes, sir.

[151] Q. And I take it from what you said that there is no way to determine exactly how many inches the gun was fired from but both of them appeared to be fired from almost point-blank range? A. Yes, sir, that is what it appeared to me.

TESTIMONY OF DETECTIVE CHUCK VAUGHN

Direct Examination

By General Dotson:

[155] * * * Q. When did you make a search of the driver if at all, please sir. A. After I had talked to Mr. and Mrs. Pittman inside the trailer we began processing the scene. At that time I raised the driver up and found a pistol in his right pocket.

Q. Do you recall what kind of pistol that was? A. It was a .22-caliber RG pistol.

Q. I will hand you this pistol and ask you if you can identify it, please, sir? A. Yes, sir.

Q. Where have you seen that pistol before? A. This is the pistol I pulled out of Charles Browning's pocket.

Q. Describe for the Court and the jury how that pistol was in his pocket, please, sir. A. He was slumped over. As I raised him up—he had on a pair of levis that were sort of tight, fit tightly—the pistol was inside his pocket with the handle sticking out like that.

Q. Do you have it placed in your pocket so that just approximately one-half of the butt is showing? A. Yes, and the pocket was tight against the gun.

[156] Q. How did you remove that pistol? A. I had to lean Mr. Browning over toward the left side of the truck so that I could pull the gun out of his pocket. It would not come out until I straightened him up a little bit.

Q. What if anything did you do with the pistol then? A. I gave it to Detective Grisham.

Q. At that time did you check it to see if it had been fired at all? A. No, sir.

Cross Examination

By Mr. Scott Daniel:

[157] * * * Q. Was the door to the passenger's side of the vehicle shut? A. Yes, sir.

Q. And were the windows all up? [158] A. The passenger window was up; I believe the driver's window was down and the door was open.

Q. The driver's window was down? A. Yes, sir, the passenger window was up and the driver's window was down.

TESTIMONY OF DETECTIVE EDDIE PEEL

Direct Examination

By General Dotson:

[159] * * * Q. The following day did you take part in any way with the investigation of the shootings? A. Yes, sir.

Q. What if anything did that consist of, please, sir? A. The victim's truck was towed to the Police Department here in the City. It was parked under the shed in back of the Police Department. It was to be processed later that day. That morning I went to the Police Department where the truck was at and inside the truck I saw some empty cartridges.

Q. How many empty cartridges did you find inside the truck? A. Three.

Q. Where inside the truck did you find these empty cartridges? A. I found one in the driver's seat, one in the passenger's seat, and one on the floorboard behind the passenger's seat. The truck had bucket seats in it.

Q. Finding all three of these cartridges inside the truck indicated that the gun was where when it was [160] fired. A. It was inside the cab of the truck.

* * * Q. Did you determine what gauge these were when you found them? A. .25-caliber.

TESTIMONY OF DETECTIVE DAVID GRISHAM

Direct Examination

By General Dotson:

[166] * * * Q. Did you have an opportunity to view Joy Faulk's body and Charlie Browning's body? [167] A. Yes, sir.

Q. What if anything did you observe about them at the hospital? A. Joy Faulk, I observed what appeared to be three bullet wounds.

Q. Where were they, please, sir? A. One was in her left cheek, one bullet wound was in her left eye, and the third bullet wound was on the back of her left shoulder.

Q. After you left the hospital were you and Mr. Galloway together most of the time during the investigation? A. Yes, sir.

Q. When was an autopsy performed on the two bodies? A. January 1st.

Q. Was Mr. Galloway with you on that day? A. No, sir.

Q. Who performed that autopsy, please, sir? A. Dr. Bob Kendall.

Q. Were you present when he performed the autopsy? A. Yes, sir.

Q. What foreign, if any, substances did he remove from the bodies of Joy Faulk and Charlie Browning? [168] A. He removed two bullets from Joy Faulk and one bullet from Charles Browning.

[169] * * * Q. Were you present when the autopsy was performed on Charles Browning? A. Yes, sir.

Q. I will hand you this container and ask if you can identify this, please, sir? A. This is a container marked by me with a bullet in it.

Q. Where did you get that? A. This is a bullet taken out of [170] Charles Browning.

[171] * * * Q. Do you recall whether the lights were on or off on the truck you saw out at Jeff Faulk's trailer? A. The headlights? Q. Yes. A. The headlights were on.

Q. Do you recall, if there was another vehicle in front of that truck? A. Yes, sir.

Q. What kind of vehicle was that? A. It was a white Monte Carlo.

Q. Do you recall if the inside light was on on the truck or not? A. No, sir.

Q. It was not on? A. It was not on.

[172] * * * Q. Did Chuck Vaughn turn over a pistol to you? A. Yes, sir.

Q. I will hand you this pistol that has already been introduced into evidence and ask you if you can identify that, please, sir? A. Yes, sir.

Q. What is that? A. It is a RG .22 pistol.

Q. What caliber? A. .22.

Q. Did you make a visual inspection of that gun upon Mr. Vaughn turning it over to you? A. Yes, sir.

Q. And what did that inspection reveal as to whether it was or was not loaded? A. It was loaded, fully loaded with one spent cartridge.

Q. What? A. It was fully loaded but had one spent cartridge.

Q. At the time you looked at it did you determine where the spent cartridge was inside the chamber? A. Yes, sir.

Q. Where was it? [173] A. About half way down on the right side. It wasn't lined with the chamber.

Q. It was not in the position where it would have been had it just been fired? A. No, sir.

Q. Did you have that gun taken to the lab to make a determination as to whether it had been fired that night or not? A. No, sir.

Q. Did you make an inspection by smell to see if it had been fired? A. No, sir.

Q. Mr. Galloway I believe found one spent casing at the scene? A. Yes, sir.

Q. And he found one bullet, the contents of a casing, at the scene? A. Yes, sir.

Q. Mr. Peel found three spent casings in the truck the next day? A. Yes, sir.

Q. What if anything did Charles Smith find at the scene the next day and who is Charles Smith? A. Charles Smith is a deputy with the Sheriff's office. He was assigned that day to protect the [174] scene. While he was there he found a .25 automatic shell casing.

Q. What if anything did he do with that? A. He gave it to me.

Q. What if anything did you do with it? A. I took it to my office.

Q. Did you take it to the laboratory? A. No, sir.

Q. Do you know where it is today? A. No, sir.

Q. Did you intentionally not take that shell to the lab? A. No, sir.

Q. How many times have you looked for it? A. Quite a few.

Q. What you're saying is that it is just lost? A. I just lost it.

[175] * * * Q. Where were the bullets in the deceaseds' bodies when Dr. Kendall removed them? A. Joy Faulk had one just behind her neck right underneath her skin and the other was in the back of her shoulder almost between her shoulder blades.

Q. Where was the bullet removed from Charlie Browning? A. In his brain.

Q. Where was he shot? A. Right on the cheekbone.

Cross Examination

By Mr. Scott Daniel:

[184] * * * Q. Now, I believe you indicated from your [185] investigation that you found powder burns on both bodies; is that correct? A. What appeared to be powder burns.

Q. It looked as though both victims had been shot at virtually point-blank range; is that a fair statement? A. Yes.

TESTIMONY OF MITZI FAULK

Direct Examination

By General Dotson:

[201] * * * Q. What was your mother's name, hon? A. Joy.

Q. Is Joy living today? A. No.

Q. What happened to Joy? A. She's dead.

Q. What happened to her? A. Clicker shot her.

Q. Who is Clicker? A. Clicker Clark.

Q. How many times did he shoot her? A. Three.

Q. Where did he shoot her, hon? A. There was two up here and one in her jaw.

Q. Who is Charlie—do you know Charlie Sue? A. (Witness nods in the affirmative.)

Q. Who was Charlie Sue? A. [202] A. Shirley's mama—I mean Shirley's husband.

Q. What happened to Charlie Sue? A. He's dead.

Q. What caused him to die? A. Clicker shot him.

Q. Where was your mother and Clicker? Where was your mother and Charlie Sue when Clicker shot them? A. Over at Jeff's.

Q. At Jeff's trailer? A. Yes.

Q. Were you inside the truck? A. Yes.

Q. Who was in the truck with you, hon? A. My mama.

Q. And who else? A. Charlie Sue.

Q. And who else? A. Michelle.

Q. All right, what happened after Clicker shot your mother and Charlie Sue? A. We got out.

Q. How did you get out of the truck, hon? A. I climbed over Charlie Sue.

Q. And what did Shellybean [Michelle] do? A. She climbed over Mama.

[203] Q. And did she climb over Charlie Sue too? A. Yes.

[204] * * * Q. What kind of truck was Clicker in? A. Orange and red.

Q. What color? A. Orangeish red.

Q. Where was his truck? A. Right behind ours.

Q. What was he doing behind your truck? A. I don't know.

Q. Was he following you? A. Uh-huh.

Q. Why did you pull into Jeff's house? [205] A. So he could pass us.

Q. What did he do when you pulled in to Jeff's house? A. He shot my mama and Charlie Sue.

Q. Did he pull his truck in behind Charlie Sue's truck? A. Yes.

Q. Did Charlie Sue have a gun? A. Uh-huh.

Q. Where was his gun? A. In his pocket.

Q. Did he get his gun out? A. He didn't have time.

Q. Do you know why he didn't have time, hon? A. Huh-huh.

[206] * * * Q. Do you see Clicker in here today? A. Yes.

Q. Where is Clicker? A. Right there (indicating).

Q. Is he the one that shot your mother? A. Yes.

Q. How many times did he shoot her? A. Three times.

Q. How many times did he shoot Charlie Sue? A. One.

Q. Did you and your mother used to live with Clicker? A. Uh-huh.

Q. How long did your mother live with Clicker? A. I don't know.

* * *

[210] * * * Q. Did your mother and Charlie Sue say anything after he shot them? A. Huh-huh.

Q. Did you say anything to Clicker? A. Huh-huh.

Q. Did your little sister say anything to him? A. (Witness shakes head in the negative).

CROSS EXAMINATION

By Mr. Scott Daniel:

[223] * * * Q. Now, when the person came up there [224] and shot your mama and Charlie Sue, did they say anything at all? A. Huh-huh.

Q. Didn't say anything at all? A. (Witness shakes in the negative).

Q. And your mama and Charlie Sue didn't say anything at all? A. Not that I know of.

Q. Did anybody say anything about it before they got there, before the person got there? A. Huh-huh.

Q. Didn't say anything at all? A. (Witness shakes head in the negative.)

Q. I don't believe you knew—you didn't know there was a truck behind you, did you? A. (Witness nods in the affirmative.)

Q. You did? A. Uh-huh.

Q. But nobody said anything about it? A. Huh-huh.

Q. Didn't say anything at all? A. Huh-huh.

Q. How long was the truck behind you or do you know? A. About an hour, I guess.

[225] Q. About an hour? A real long time? A. I don't know.

Q. Did you all ever stop to see who was in the truck? A. Huh-huh.

Q. Nobody ever said anything at all about who was in the truck? A. (Witness shakes head in the negative.)

Q. And when the truck stopped did it stop right behind you? A. Uh-huh.

Q. And I don't believe you could see the truck then, could you? A. Uh-huh.

Q. How could you see it? A. He left his lights on.

Q. So all you could see was lights? Is that what you're saying? A. (Witness nods in the affirmative.)

[226] * * * Q. Now, when you got to Jeff's house was there any fight or anything at all happened before this man came up in the truck? A. Huh-huh.

Q. Now, when you got there was there any kind of a fight before you got there? A. Huh-huh.

Q. There wasn't any fight at all? A. (Witness shakes head in the negative.)

Q. You didn't ever say to anybody that—let me ask you this: How did you know Charlie Sue had a gun? A. It was in his pocket.

* * *

[232] * * * Q. Did you tell anybody, did you say after this happened, "they have guns; they have been fighting"? A. (Witness shakes head in the negative.)

Q. You didn't say that at all A. (No response by the witness.)

Q. You don't remember ever saying "they have been fighting"? A. They hadn't.

Q. They hadn't? That has never been said? A. (Witness shrugs shoulders.)

Redirect Examination

By General Dotson:

[252] Q. Mitzi, did you see the person that shot your mother? A. (Witness nods in the affirmative.)

Q. Who shot your mother? A. Clicker.

Q. Did you see the person that shot Charlie Sue? A. (Witness nods in the affirmative.)

Q. Who shot Charlie Sue? A. Clicker.

Q. Your daddy didn't shoot Charlie Sue, did he? A. Huh-huh.

Q. Your daddy didn't shoot your mother either, did he? A. Huh-huh.

[253] • • • Q. Did Clicker Clark shoot your mother? A. Uh-huh.

Q. How many times? A. Three.

Q. How many times did he shoot Charlie Sue? A. One.

Q. You won't ever forget it, will you? A. Huh-huh.

Bench Conference

[256] * * * MR. DANIEL: If your Honor please, I would presume by the opening of this testimony that the Attorney General is attempting to show statements made by the witness outside the courtroom to somebody else and I think these are simply hearsay statements and until her testimony is contradicted or impeached by some other witness I don't see that this would be proper or admissible.

THE COURT: Are you talking about the statements of the little girl?

MR. DANIEL: Statements she made to somebody else. I don't think they can prove for any purpose.

THE COURT: Mr. Daniel, I was aware of this possible problem as the proof developed and I would say that you so successfully contradicted her stories with your cross-examination that her credibility has been impeached, and you also developed a theory that her father had concocted her story for the purposes of testimony and so I think any spontaneous utterances in close proximity to this occurrence would be admissible.

TESTIMONY OF MARY SMITH

Direct Examination

By General Dotson:

[259] * * * Q. Did Mitzi tell you what she was doing on the road? A. She said, "They are fighting. They have got guns." And she said, "My mama has been shot."

Q. Did she tell you who shot her mother? A. She said, "Charles and Clicker have got guns."

Q. Then did she tell you what had happened to her mother? A. She said, "My mother is dead. Said she has blood all over her face."

Q. Did she tell you who shot her mother? A. Yes.

Q. Ma'am? A. Yes.

Q. Who did she tell you shot her mother? A. She said, "Clicker shot my mother."

[269] * * * Q. Do you remember telling me and answering questions previously that she didn't say who shot her mother and she didn't say she saw the man who shot her mother? A. Yes.

[270] * * * Q. And that is what you said? And I believe when it came down to asking you you said, "They have been fighting. They have guns." Is that correct? A. Yes.

* * *

[272] * * * Q. Do you remember Mr. Dotson asking you then at that time, this is the question. Do you remember Mr. Dotson asking you this question: "She told you she saw her mother? Did she tell you who shot her mother?" And your answer, "No."

And the question, "Did she tell you she saw the man who shot her mother?" And your answer, "Not—no."

Question, "What did you start to say?" And your answer, "Not directly."

Question, "Did she tell you indirectly?" "Not indirectly that anybody specifically had shot her mother. The names were mentioned, Charles, Clicker. It says Charles, Charlie Sue, and I believe she called him—they

have gun. She said Charles and Clicker, they have gun and they have been fighting. I don't know what sequence this would have followed or I don't know what connections there was. I'm telling you what she told me."

Now, do you you recall giving that testimony to the same Mr. Dotson? A. Yes, I do.

Redirect Examination

By General Dotson:

[274] * * * Q. Reading from Page 13 of the same manuscript Mr. Daniel was reading from, Line 22,

"Q What did you start to say?

"A Not directly.

"Q Did she tell you indirectly?

"A Not indirectly that anybody had specifically shot her mother. The names were mentioned.

"Q What names were mentioned?

Cross Examination

By Mr. Scott Daniel:

"A Charles and Clicker.

"Q And Charlie Sue I believe is what she called him, isn't it?

"A She said Charles and Clicker. They have guns and they are fighting. They have been fighting. I don't know what sequence this would have followed or I don't know what connection there was. I'm telling you what she told me.

"Q Is it not true that you and your husband were more upset than the two little children were?

"A It's quite possible.

"Q So you're not sure what she told you are you?

"A I'm sure what I repeated in court here today, yes.

"Q That she said Clicker. Did she say Clicker was where her mother was shot at the scene? Not using those words, but when did she say Clicker and this fellow were fighting?

"A She didn't say any specific time.

"Q When did you take it to mean?

"A Well, I can't truthfully say.

"Q Do you know who she was talking about when she said Clicker?

"A No, because I don't know either side. I don't know any of them. I know none of them. I had never seen the children until we picked them up that night.

"Q She told you that they both had guns and they were fighting?

"A She said they have guns and they have been fighting. He has killed my mother and her mother was shot in the eye.

"Q Who did she say when said he has killed my mother?

"A I didn't ask any questions. As I stated earlier, I didn't ask any questions.

TESTIMONY OF MARION SMITH

Direct Examination

By General Dotson:

[305] * * * Q. What if anything was said by either one of them when they first got in the vehicle? A. What I could understand, they were asking for help. The oldest one was doing the talking. She was asking for help.

Q. What was her emotional condition? A. She was pretty emotional.

Q. Would you classify that as being upset? A. Yes, I would.

Q. What did your emotional condition get at that time? A. After she told me what happened I was upset.

Q. What did she tell you had happened? A. She said they were fighting, they had guns. Her mother had been shot or been killed. And I asked her who she was.

Cross Examination

By Mr. Scott Daniel:

[315] * * * Q. I believe you also said the children, describing what had happened, simply said that their mother had been killed, they are fighting, and they had guns? A. That's right.

Q. And I believe you also said that she did not say who killed her mother and you don't recall the children mentioning any names at all? [316] A. Right, I do not recall that.

TESTIMONY OF BILL HUCKABY

Direct Examination

By General Dotson:

[348] * * * Q. Did you and your wife go in the direction to get the children? A. Yeah.

Q. Did you stop anywhere before getting the children? A. Yeah, we stopped at Sam's to see if he was home to go with us to get the kids.

Q. Was Sam at home? A. No, he was gone to Shelbyville.

Q. Where then did you go? A. We went from there to Jeff Faulk's.

Q. For what reason did you go to Jeff Faulk's? A. We were going to get him to go with us because he was more familiar with the kids than we were.

Q. What if anything did you observe? A. This truck was sitting there and the lights was on and the motor was running and the radio was playing. [349] My wife got out and went by the truck and went on up and knocked on the door. When she went by the truck she made a remark, "There's somebody tapped out." With all those cars around there we thought they were having a party but there wasn't anybody at home in Jeff's trailer.

* * * Q. So you went up to that trailer and your wife went by and stated something about somebdy being in the truck tapped out? A. Uh-huh.

Q. Did she go to the trailer? A. Yeah, she went on up and knocked on the door.

Q. Was there anyone there? [350] A. No.

Q. Do you recall whether the door was open or closed? A. It was closed.

Q. Were the lights on or off in the trailer? A. The lights were on.

Q. What did you do then? A. Well, I thought maybe if it was somebody tapped out the best thing for me to do was to get up there in case he got up, you know, and walked into her when he came back by, to keep down a rukus I just walked over there and hollered and nobody didn't answer.

Q. What did you say you observed about the truck? What kind of truck was it, if you recall? A. It was red Ford pickup.

Q. The lights were on? A. Yeah.

Q. What else was on? A. The radio was playing and the motor was running.

Q. So what did you do then? A. I just walked up there and hollered at them, you know, and nobody didn't say nothing. And I couldn't see in there real good but I could tell there was two in it and he was laying down like he was working on the radio. And [351] I reached in and turned the light on and when I did, it was awful. I mean, blood and foam out of her mouth and necklace was swelled real tight here. And I just motioned for her to come on, let's go, that that was them. See, I wasn't expecting to find them.

Q. What did you do them? A. She came by and she had to look and she started crying and squalling and we got in the car and went on up to Hackneys.

Q. What about the truck motor? A. I cut the motor off and turned that light on to see but I don't remember—

Q. What light are you talking about? A. The dome light on the cab, the headlight, I just turned it to the left.

Q. And after you saw what did you do? A. I think I cut the motor off and we left and went on up to Hackneys.

Q. Did you leave the headlights on? A. I don't remember for sure whether I cut them off or left them on.

TESTIMONY OF LOYALL PITTMAN

Direct Examination

By General Dotson:

[390] Q. Did your daughter Joy and Sam Faulk get a divorce? A. Yes, they did.

Q. After they got a divorce did at any time your daughter start seeing the Defendant, Clicker Clark? A. Yes.

Q. Do you recall when she first started seeing him? A. Well, it was somewhere toward the last part of '78 she started seeing him, as well as my recollection, shortly after her divorce.

Q. When did she get a divorce? A. In November of '78.

Q. Are you sure it's '78 or '77? A. Well, may have been '77—yes, it was '77.

Q. And after she got a divorce—when you say she dated Clicker, did their relationship get more serious than that? A. Well, yes, she moved in with him.

Q. Do you recall when that happened? A. I don't know exactly the date but it was somewhere along either before the first of the year or after the first of the year, '77-'78.

Q. What do you mean she moved in with him? [391] A. She moved in where he lives now.

Q. Did she move her children with her? A. Yes.

Q. Did you have occasion to see her or see Mr. Clark during this period of time? A. Yes, I saw them.

Q. With just a yes or no answer, during this period of time did your daughter and Clicker Clark have any trouble with one another, disturbances? A. Yes.

Q. During this period of time did you ever have occasion to know of any threats by your daughter toward him or him toward your daughter. A. Him toward my daughter.

Q. Can you tell the Court and the jury when the first one of those was and what was the occasion behind it, please, sir? A. It was after school started last fall, 1978. She was leaving her oldest daughter in Nashville with her mother and she was sending her to school and they had taken her down there and was on the way back and they pulled in my driveway and they had been arguing and she came into my house and asked me if I wouldn't take him home.

Q. Had she been living with him during this period of time? [392] A. She had been living with him. She had moved out on some occasions but moved back.

Q. She had moved out on occasion prior to this time? A. Yes, sir.

Q. On this day did you in fact talk to the Defendant, Clicker Clark? A. I took him in my truck and drove him home.

Q. Could you tell whether he had or had not been drinking? A. He had been drinking.

Q. How could you tell that? A. I could smell it.

Q. What was the conversation you had with Mr. Clark on the way as you were taking him home that day? A. I

don't recall all of the words and everything that was spoken, but on several different times he made the threat that if he caught her with anybody, you know anybody else, that he was going to kill her.

Q. He told you that on the way home that day? A. Yes, sir.

Q. Did you have any more words or was anything said with him at that time about that? A. I just told him he would be best off and [393] so would Joy for him to stay away from her and her away from him.

Q. After that did Joy and Clicker go back together? A. Yes, for some period of time. I don't know really if she stayed and lived over there or not but they had saw each other quite often.

Q. You're not saying she didn't, you just don't remember? A. I don't know that she went and moved back in after that.

Q. After that threat did you have an occasion to talk with Mr. Clark again? A. On another occasion. It happened—she came in and he was with her, coming from work, and he was in the car with her.

• • •

[395] A. She came in the drive—that was when she was staying at my house—and wanted me to take him home.

Q. Did you get out and talk to him again? A. We got in the truck.

Q. What kind of truck was it? A. It was my '62 model pickup Chevrolet.

Q. What kind of vehicle was he in? He was with her in her car.

Q. How did he come about being in her car? A. I don't know where he had gotten in the car at but somewhere either at work or on the way home he had gotten in the car with her.

Q. Was he drinking on this occasion? A. Yes, sir.

Q. What if anything was the conversation you had with him then? A. It was just nearly—about like the first one.

Q. And what was that? A. He made threats if—he wanted her and he didn't want her to be with anybody else and if he caught her with anyone that he would kill her.

Q. During this period of time to your knowledge was she going with anyone else? A. Not to my knowledge, no, sir.

[396] Q. After that did they have a reconciliation or getting back together of any sort? Did they see one another any after that time? A. Well, they saw each other but I really don't know under what circumstances.

Q. Did you ever have an occasion to have a confrontation or discussion with him again? A. One night after she had driven in the driveway from work he came in the driveway in his truck.

Q. You said the first two incidents took place after school started? A. Well, this was between the period of time that school started and up until—all three occasions.

Q. When was this last occasion? A. Sometime prior to Thanksgiving.

Q. How close to Thanksgiving was it? A. I don't really know exactly how close because we were gone the week of Thanksgiving.

Q. Was it right before you left? A. It was a short while before we left, I'd say a week or two weeks. I could be off one way or the other.

Q. When is Thanksgiving? A. It's in November.

Q. The third Thursday or something like that? [397] A. Yes, sir.

Q. So this was sometime in November of '78? A. Yes, sir.

Q. What was the confrontation you had with Clicker Clark on that occasion? A. Well, he got out of his truck and came to the end of my porch. And he wanted to see my daughter and I told him that he couldn't see her and him drinking.

Q. How could you tell he was drinking? A. I could smell it and then with his actions and loud speech.

Q. What else did he say to you? A. He shook his finger at me like that (indicating) and said, "I'm telling you, her daddy, if I catch her with anybody else I'm going to kill her."

Q. What if anything did you say to him? A. I told him to leave—or I asked him to leave—and for him to stay

away from her. And then he didn't make any attempt to leave and I told him he had better leave.

Q. What was the conversation further that you had with him? A. Not much. He turned and left.

• • •

[401] • • • Q. On December 30th, 1978, sometime around 8:30 or 9:00 o'clock, did you have occasion to see your daughter? A. Yes, sir, I did.

Q. What time of the day was it that you saw your daughter? A. The last time I saw her was between 8:00 and 8:30.

Q. Where did you see her? A. At my house.

Q. What was the occasion of her being at your house? A. She had came into my driveway in a truck with Mr. Browning and the two little girls, Mitzi and Michelle.

[402] • • • Q. How far do you live from where Jeff Faulk lived? [403] A. I really haven't measured the mileage. I would say it's about five miles out to 231—it would be somewhere around I guess ten or twelve miles. That is a rough guess; I don't know for sure.

Q. You don't know how long it would take to drive from your house—did you go down Walnut Grove Road? A. Well, you could go Walnut Grove Road or you could go Rock Springs Road or you could go to Midland Road and down.

Q. There are several roads out there—A. Yes, sir.

Q. —that don't go anywhere but they all go the same place? A. Well, you can end up at the same place with the right turns.

Q. So you don't know how long it would have taken them to drive from your house or to Jeff's house? A. Well, if they would have went directly from my house over there it wouldn't have taken long.

• • •

[411] • • • Q. Even after Thanksgiving, did you have further conversation with Stanley Clark? A. Well, he had—

Q. Did you have further conversation with Stanley Clark? A. Yes or no?

Q. Yes or no. A. Yes.

Q. Do you recall what day it was? A. No, sir, I don't know exactly what day it was.

Q. Did you have a conversation with him on Christmas day? A. Yes, sir, Christmas evening.

Q. Do you recall that conversation? A. Yes, sir, somewhat.

Q. What was Clicker's request of you at that time as far as it related to Joy? A. He wanted to come over to my house and be with her on Christmas evening.

Q. And what did you tell him at that time? A. I told him it would be best if he didn't [412] come over there.

Q. Then did you have anymore conversation with him during that time frame? A. Somewhat of an argument.

Q. What was this argument about? A. Well, he made some kind of statement about something that was going on, about her staying with some other man, and I told him I didn't know anything about it and he told me I was a liar.

Q. What did he say about her staying with other people? A. Well, there wasn't a whole lot said on the phone because I told him I wasn't listening to a bunch of stuff and if he wanted to call me a liar to come over to my house and call that to me to my face.

Q. Was he upset at that time? A. He seemed to be very much so.

Q. Could you tell whether he had been drinking at that time? A. No, sir, I couldn't say that he was.

Q. When was this conversation had with Clicker on Christmas? Was it Christmas evening? A. It was Christmas evening just a short while after dark as well as I recall.

Q. It wasn't the day before Christmas? [413] A. It was Christmas day, Christmas evening.

Cross-Examination

By Mr. Scott Daniel

[423] * * * Q. Although you say he threatened the life of your daughter you didn't ask her anything about it? A. I did not.

Q. You didn't even tell her about these threats? A. I told her about them but I didn't inquire as to what had prompted it other than I said that—to him and her—if you can't get along stay away from one another.

[424] Q. As I understand it there were three separate occasions. Each time did you tell your daughter that Stanley had threatened her? A. I don't remember whether I told her each time or not.

Q. Would you have had any reason not to have told her or what would have been your attitude towards that? A. I didn't have any reason not to tell her.

Q. Did you have reason to tell her? Do you know whether you did? A. I don't remember whether I discussed it with her on all three occasions or not. On the third time she heard the conversation that went on herself.

Q. That was the one where— A. —he came to the edge of the porch.

Q. But what I'm asking you about is this: In your conversations on any of these three occasions you didn't go into any indepth [sic] or you didn't ask your daughter about it or you didn't— A. I did not, no sir.

TESTIMONY OF ELLEN PITTMAN

Direct Examination

By General Dotson:

[461] * * * Q. On or about a day, two days before Thanksgiving, did you have occasion to overhear a conversation between your husband, Loyall Pittman, and the defendant, Clicker Clark? A. Yes, I did.

Q. Where was that conversation had between your husband and Clicker Clark? A. On our front porch.

[462] * * * Q. Did you hear your husband and Clicker discuss your step-daughter, Joy Faulk? A. Yes.

Q. All right, what was the conversation that they had at that time, please, ma'am? A. I heard Mr. Clark tell my husband, "I'll tell you one thing, if I catch her with anyone I'll kill her."

TESTIMONY OF SHIRLEY BROWNING

Direct Examination

By General Dotson:

[470] * * * Q. What night did you have a conversation with Clicker at that place? A. It was the 24th, the day before Christmas. He come up there and—

Q. Was it on a Saturday or Sunday? A. Saturday.

Q. Was it Saturday afternoon or Saturday night? A. Saturday night.

Q. What was the conversation that you had with Clicker? A. He come up there behind me and I looked up and he was standing behind me and I asked him what was he doing there and he said he wanted to find out what was going on between Charles and Joy.

Q. Between who? A. Charles and Joy. And I told him I didn't know nothing about it except for all I knew Charles had taken [471] her to pick up the kids from my mother's house on that Friday night and they stayed at Johnny's that night.

Q. Is that the Friday night before this Saturday night? A. Uh-huh.

Q. And you told him you thought they had spent the night together? A. I told him that they had spent the night over there, at Johnny's.

Q. What else if anything did he say to you about Joy and your husband? A. He asked us—there was a girl that was with me—

Q. Who was the girl that was with you? A. Ethel Patterson.

Q. He said, "What would you do with somebody that gave you the claps? And he said "I ought to kill her." And me and Ethel just laughed it off. He just sat there and that was all he talked about the rest of the night.

Q. What was all he talked about the rest of the night? A. About her and Charles. He kept asking me what was going on and I kept telling him I didn't know. I said, "Her car tore up and Charles took her to get the kids." [472] And he said that Joy told him that the car tore up.

Q. Then when was the next time you saw Stanley Clark? A. The same night at 1:30 he came to my house.

Q. What if anything did he say to you at your house that night? A. Well, he came and he knocked on the door and I pulled up the curtain over the door and he asked me to let him in and I told him no. I told him I didn't want to talk to him. And he said, "I just want to know what's going on between Charles and Joy." And I said, "Clicker, I told you at Green Acres that I didn't know nothing about it and I don't want to talk to you, just get out of here."

Q. That was on a Saturday night? A. That was Saturday night.

Q. Then when was the next time you saw him after that? A. On Monday night, the 26th, at about 10:30.

Q. Was Monday night the 25th or the 26th, or do you remember? A. It was the day after Christmas, the 26th.

Q. Where did you see him? A. At my house.

Q. Was anyone with him when he came to your house? [473] A. Sylvia Kay Hillis.

Q. Who is she? A. She lives up the road about six miles from me.

Q. Was she raised in that neighborhood out there? A. Uh-huh.

Q. You have known her for sometime too? A. Uh-huh.

Q. What if anything was said to you by Clicker Clark on that night? A. Well, me and my next door neighbor, Ethel Watson—she had come over to get some aspirins. I had done been in bed an hour and she come over to get some aspirins at 10:30 and she said, "Well, here comes Charlie Sue in," because it was a truck, a Ford like his. And when I opened the door I said, "No, that's not Charles, that's Clicker and Sylvia Kay." And she stood behind me and he said, "Shirley, let me in; I want to talk to you." And he grabbed for the door. And I said, "No, I don't want to talk to you. I said I've not got nothing to say to you. And he said, "I just want to know what's going on between Charles and Joy." And I said, "Clicker, I done told you I don't want to talk to you. Ya'll can just [474] leave." And Sylvia Kay said, "He just wants to know what's going on, Shirley." And I said, "I don't care, I've not got nothing to say to neither one of you. I said Charles and I are friends and we will always be friends and I said ya'll won't never break us up.

Q. What else if anything did he say to you about it? A. He said, "Well, I just wanted to find out what is going on before I got mad and blew off the handle and did what I had to do."

Q. How many times did he say that? A. Twice I think.

TESTIMONY OF SYLVIA KAY [HILLIS] BARRETT

Direct Examination

By General Dotson:

[504] * * * Q. On or about December of 1978 around Christmas or the day after or sometime through there, did you have occasion to be in the company of Stanley Clark? A. Yes, sir, I did.

Q. What was that occasion, please, ma'am? A. That was Christmas night. I rode home from work.

* * *

[506] * * * Q. Was anything discussed about Charlie Browning or Joy Faulk? A. Well, just—the only thing, Stanley said that—

Q. Prior to that time was anything said about your ex-husband—what was his name? A. Jessie Leathers.

Q. Was anything said about Jessie coming there? A. I said, "Let's hurry up and get out of here. I said "Jessie is liable to drive up."

Q. And what if anything did Stanley say? A. He said, "Well, don't worry about that; [507] I can take care of that."

Q. What if anything did he show you then? A. Well, he pulled something out of his pocket but I couldn't swear to what exactly, you know, it was which one it was. It looked like a .25 automatic to me.

Q. What color was it? A. It was dark.

Q. Did it look like a .25 automatic? A. Yes, sir, it did.

Q. Did it look anything like that gun? A. Yes, sir, it was dark.

Q. It was dark? A. Uh-huh.

Q. Before that date you knew what a .25 automatic looked like, didn't you? A. Yes, sir, I have owned one.

Q. You have owned one. A. Yes, sir.

Q. So this was on a Monday he had a .25 automatic pistol with him? A. Yes, sir.

Q. Where did you and Clicker go after he showed you the pistol? A. Well, we went on 231 and headed toward home.

[508] Q. Where did you stop? A. At Shirley Browning's house.

Q. Do you know why he stopped? A. Well, he said he wanted to talk to her.

Q. All right, had you and Clicker had any conversation about Charlie Browning or Joy Faulk before then? A. The only thing, just Stanley seemed upset about her.

Q. What did he say about her? A. Well, he just said if he ever caught her with anybody he was afraid he would do the wrong thing.

Q. What were the words he used, though? A. He said, "Well, if I ever catch her with anybody I'll kill her."

Q. He told you that on the 25th? A. Yes, sir.

[509] * * * Q. What was the conversation between Shirley and Clicker? A. She was telling Clicker about Charlie Sue and Joy going together.

Q. Okay, why did Clicker want to stop there, though? A. I don't know.

Q. He didn't say anything about it? A. No, sir. He said he just wanted to talk to her.

Q. Did he make any threats or say anything to Shirley there that you remember about Joy and Charlie Sue? A. No, sir.

Q. Did he say anything about I might get mad and fly off the handle? A. No, sir.

Q. Did you hear him say that? A. No, sir.

Q. Could he have said that? A. If he had said it I would have remembered it but I don't remember him saying anything like that.

Q. Well, during part of the time you were there did you not go get in the truck before Clicker did? A. No, sir. [510] Q. You stood there the whole time? A. That's right.

Q. You don't recall any of that conversation? A. No, sir.

Q. What did you do after you got back in the truck? First, how long did you stay there? A. I would say about five minutes.

Q. Then where did you go? A. We left from there and started on home. We got to Christiana Lane and he turned off there and I said, "Where are we going, Stanley?" And he said, "Well, I wanted to go by my house and check on things."

Q. Did you in fact go to Stanley's house? A. Yes, sir.

Q. Did you get out of the truck? A. I got out and went as far as up in the yard because the front door was standing open when we drove up.

Q. And what did he say after he went inside the house? A. Well, I didn't go inside the house. I just went up in the yard.

Q. Did he go inside the house? A. He went inside.

Q. Did he come back out? [511] A. He came back out. He said somebody had been in the house.

Q. Did he state what they had taken? A. He said, "Somebody has took my .25," but he never explained nothing farther.

Q. What time of the night was this? A. I don't know exactly; it was right after we left Shirley's.

Q. Was he drinking that night? A. Yes, sir.

Q. Have you ever been around him when he wasn't drinking? A. Yes, sir, I have been around him several times when he wasn't drinking.

Q. Do you know him real well? A. Yes, sir.

Q. Where did you go after you left Clicker's house? A. After we left Clicker's house we went on to my mother and daddy's and he took me on home and let me out.

Q. Although he said something about somebody had stolen a pistol from him— A. He said a .25. He never said "one."

[512] * * * Q. And he told you if he ever caught her out with anybody he would kill her? A. That's what he said but he was drunk when he said it. He was.

Q. Was he drunk that night? A. Yes, sir, and I wouldn't have asked to ride home with him if I had known, you know, that Stanley was that drunk. But just to look at him he didn't look that drunk, but when he got to talking and after I got in the truck then I knew that he was really loaded.

Q. But he was able to drive out there? A. Well, he run off on the side of the road two or three times.

Q. But he was able to have conversation with Shirley Browning? A. Uh-huh.

Q. And he discussed Joy and Charlie Sue? A. Yeah, they was talking about it.

Cross Examination

By Mr. Scott Daniel:

[516] * * * Q. Now, Mrs. Hillis, on that occasion, I believe you said Stanley was drinking and was drinking rather heavily? A. That's right.

Q. And ran off the road several times on the way back? [517] A. Yes.

Q. And I believe you said that he went by his own house and at that time you saw that the door was open? A. Yes, sir.

Q. Did it appear that the door had been pulled open or had been damaged? A. Well, the door was standing about halfway open and he stopped and he told me, he said, "You stay in the truck. I'm going to see if anybody is in the house or anything." And so he went on up there. I got out of the truck after I waited about a minute and I

didn't hear nothing of him and I walked up in the yard and he come to the door and he shook the door and he said, "Look, somebody has broke in my house." The door was torn loose from the house.

Q. Did he also tell you at that time to stay back while he went inside and left the car running? A. He sure did.

Q. And did he tell you to stay there and if anything happened, if there was anybody inside you were to go and get help right away? A. He told me to go get his father and get help.

Q. And he went in while you stayed back? A. That's right.

[518] Q. And a few minutes later he came out and at that time he told you he had some things that appeared to have been stolen from his house— A. Yes.

Q. —and included in that was a gun of some type? A. He said a .25 but he didn't say what.

Q. And this was the same night that he had previously shown you another gun which you assumed was a .25? A. That's right.

[519] * ** * Q. I believe you testified that you did not hear anyone make a statement of any statements made about Joy to Shirley? A. Stanley didn't make any. The only thing I heard him say, she was talking about them and all and he told her that he didn't want to see her hurt or anything, all she needed was a good tail-whipping.

Q. He was telling that to Mrs. Browning? A. Yes.

Q. He said that he wouldn't want to see her hurt or anything? A. That's right.

[520] * * * Q. Is it not true that on that occasion Stanley seemed strange to you, he seemed confused? A. Well, he was awful upset.

Q. And did you say on one occasion that he just didn't seem to be in his right mind? A. Well, you know, when anybody is drinking they're not, but Stanley just seemed withdrawn.

Q. And did you not say before that Stanley told you about threats some people had made toward him? A. Yes.

Q. And were those threats alleged to have been made —did he not tell you that Sam Faulk and a fellow by the name of Drew had made threats to him? A. Well, he was talking about he had talked [521] to Joy's father on Christmas night and he said that he was worried that he had been—some threats had been made to him that night. And he said he felt like he ought to tell me about it. And he told me he had been threatened by Mr. Pittman and Sam Faulk and a Goosby boy.

Q. Did he tell you exactly what the threats were? A. No, sir.

Q. Didn't you say previously, Mrs. Leathers [sic], that Stanley talked kind of funny on that night and at times would start crying? A. Yes, sir, he did.

Q. And he said at one time as you repeated earlier, "I would love to see Shirley whip Joy for going with Charles," but then he said, "I wouldn't want to see her hurt." A. That's right.

Q. And didn't he also say when you asked him why one moment you want to whip her and the next moment you wouldn't want to see her hurt, did he not reply to that, "I don't want to hurt anybody. I love her. I wouldn't want to hurt her"? A. That's right.

Q. Did you state that Stanley acted like he really didn't know what he was doing? [522] A. Yes, sir, at times he didn't.

Q. And I believe you said that he would say something and then turn around a few minutes later and say something entirely different? A. That's right.

Q. And that he told you he had lost thirty-five pounds— A. That's right.

Q. —that he couldn't eat and couldn't sleep? A. Yes, sir.

Q. And he missed Joy and the children so bad that he couldn't eat at all? A. That's right.

Q. He said he loved her better than anything? A. That's right.

Q. Did he also tell you when he did try to go to sleep at night he was trying to get off his mind and that Vietnam was bothering him? A. That's right.

Q. And did he tell you that he'd been overseas and fought for Uncle Sam and said that he could see Vietnamese people coming at him in his dreams? A. That's right.

Q. And did he tell you that they just kept [523] running after him? A. Yes, sir, he said they was like a bunch of sheep coming in a drove at him, they was just headed at him and he couldn't stop but one to save his life.

Q. Did he tell you, "I just get up and walk the floor"? A. Well, he said he just gets up and walks the floor, he couldn't sleep.

Q. Did he tell you, "I get out in my truck and just drive around"? A. Yes, that's what he said.

Q. On that evening in question when he came into the Waffle House he didn't have any particular place he had been going or was going to? A. No, he didn't have any particular place.

Q. He was just driving around? A. That's right.

Q. And I believe you also personally observed a rather dramatic weight loss of Stanley from the prior summer? A. Uh-huh.

Q. Did it appear to you that thirty-five pounds would be a reasonable estimate of the weight he had lost? A. He looked like he had lost every bit of [524] that much and I asked him how much he had lost and he said, well, as far as he remembered he had lost somewhere around thirty-five pounds or more.

Q. I believe you told me he was awfully depressed or down and out— A. He was.

Q. —that he was like a different person? A. That's right. Stanley just wasn't himself.

Q. And I believe you said before that he would smile and talk to you— A. That's right.

Q. —and now you could ask him about his family or anything and he just wouldn't smile? A. That's right.

Q. And I believe that was more than on just this one occasion but that you had observed him over this period since last summer— A. That's right.

Q. --and that he seemd to get progressively more qiuet over this period of months? A. Yes, he was awfully withdrawn.

Q. He seemed very withdrawn. And I believe you said he appeared to be this way, to be upset physically and depressed emotionally— [525] A. That's right.

Q. —and that you had observed this on the occasion, not just that one evening but over this entire period of time from the last summer? A. Yes, sir.

Q. And you did know Stanley well enough to see him occasionally and speak to him and this type thing? A. Uh-huh.

Redirect Examination

By General Dotson:

Q. Sylvia, along the line of those questions Mr. Daniel asked you, I asked you one or two about Stanley myself, didn't I? A. Yes, sir.

Q. And you told me, "Clicker's not crazy; he just gets mean when he is drinking."

• • • Q. What did you tell me about Mr. Clark's disposition when he started drinking? [526] A. Well, he's just high tempered and gets upset easy.

Q. When he's not drinking there's nothing wrong with him, is there? A. Well, he just—he has seemed nervous for the last year.

Q. When he's not drinking he doesn't have any problems does he? A. I'm not around him really that much.

Q. Well, now, you had to be around him a lot, didn't you— A. Well, I just seen him now and then. I didn't see him every day.

Q. Who gave you all of this information that you just related to Mr. Daniel? A. Well, I was just describing how it was.

Q. Do you ever see anything unusual about him when he is not drinking? A. Well, he is just awful quiet in the last, past year or so.

Q. He has always been quiet hasn't he? A. Well, he stays to himself more than he ever did. He always associated with people more than he has in the past year.

Q. Wasn't Joy Faulk the first person, the [527] first woman he ever dated to amount to anything? A. I don't know; I can't answer that.

Q. You don't know about that? A. No, sir, I don't.

Q. Are you saying that he was so grieved over her seeing someone else—

MR. DANIEL: That's leading, your Honor.

THE COURT: Yes, I think it is.

Q. Did he state why he had lost the thirty-five pounds of weight? A. He said he couldn't eat, he was worried and everything, upset.

Q. Did he tell you what he was worried about? A. Well, he said he was worried over her.

Q. Could you tell whether he was or was not jealous of Joy Faulk? A. Well, he seemed awful worried and all, I'd say that.

Q. And he told you that night though that if he couldn't—if he caught her with someone else he would do what?

MR. DANIEL: Your Honor—

THE COURT: I think this has been covered.

Q. You don't know what his mental condition [528] was on the night of December 30th, do you? A. The night he picked me up and carried me home?

Q. No ma'am, December 30th, six or seven days later? A. No, sir, I don't know because I hadn't been around him.

Q. You don't know what it was a month before he picked you up, do you? A. Well, I just know when I seen him you know.

Q. But you don't know what his mental condition was? A. No. I can't answer that part.

Q. You don't know what it was six months before he picked you up, do you? A. No, he had just seemed withdrawn for a little while.

Q. Has he seemed any different to you since he has been in the courtroom here today? A. I haven't paid any attention to him.

Q. Have you seen him in the last day or two at all? A. Nothing but just through the door there.

Q. Does he look any different than you have [529] seen him in the last six months? A. No, sir.

TESTIMONY OF HENRY CLAYTON GARRETT

Direct Examination

By General Dotson:

[533] * * * Q. Do you remember the week during the week before Charlie and Joy got killed A. Yes, sir.

Q. Can you remember, Clicker Clark coming in your place of business? A. Yes, sir, he came in the store.

Q. What if anything was the conversation you and Mr. Clark had at that time? A. I don't remember anything about a conversation.

Q. Did he have anything with him? A. Yes, sir.

Q. What did he show you inside the store that day? A. A gun.

Q. What kind was it? A. I said it was a .25 automatic.

Q. When I talked to you about it what did [534] you tell me it was?

MR. DANIEL: Your Honor, I don't see the relevance to whatever he said he told him. This is his witness.

GEN. DOTSON: Okay. How did you describe that gun to me, please, sir? A. Well, it was a small little blue steel-looking gun and it had a little thing like a cigarette lighter it looked to me like that you could pull it back on top.

Q. Mr. Garrett, I will lay this in front of you and ask you if that resembles in any way the gun he had that day? A. Well, I never paid the gun a whole lot of attention, never seen it before and I never seen it since.

Q. Does that have something on the top like you were talking about? A. Well, apparently it does.

Q. What caliber gun did you think he had that day? A. A .25.

[535] * * * Q. When was this before the shooting of Joy and Charlie? A. On a Wednesday night.

Q. And they were shot when? A. On a Saturday night, I believe it was.

Q. Did he say anything to you at that time about having had any guns stolen from him? A. No, sir.

* * * Q. Have you had any conversation with Stanley Clark since the night Joy and Charlie were shot? A. Yes, sir.

[536] * * * Q. Did you have a discussion with him about a pistol at that time? A. We had a discussion about a pistol.

Q. What was that discussion, please, sir? A. Well, he said it was a .38 and I said it was a .25.

[537] * * * Q. Mr. Garrett, what was that conversation you had with Clicker Clark over the gun you just mentioned? A. Well, Stanley come in the store one night and he said that I told his brother-in-law that I seen him with a gun.

Q. With what kind of gun? A. A .25 automatic.

Q. And what did he tell you? A. And he said I didn't do it.

Q. What kind of gun did he tell you he had? A. He said he had a .38.

TESTIMONY OF TERRY HILL

Direct Examination

By General Dotson:

[556] * * * Q. Calling your attention back sometime right before Christmas of '78, did you have occasion to buy one or two pistols from anyone? A. Yes, sir.

Q. Where did you buy the pistols, please, sir? A. Charlie's Bait Shop.

Q. Where is that located? A. On the Nashville Highway.

Q. What type pistol did you buy from Charlie's Bait Shop? A. I bought a .25 automatic and a .38 pistol.

* * *

[558] * * * Q. Did you keep that gun in your possession during the entire time or did you do something with it? A. What, that day?

Q. That day or a day or two later. Sometime after that. A. It was the next weekend I loaned it to Clicker, Stanley Clark.

Q. Do you remember when that was? A. It was on a Saturday morning.

Q. Was it before or after Christmas? A. I believe it was the week before.

Q. The week before Christmas? A. Yes, sir.

Q. You are not for sure? Do you know it was before Christmas? A. Yes, sir.

Q. Do you recall what kind of .25 automatic it was? A. It was a Targa, T-a-r-g-a, I believe.

[559] * * * Q. Mr. Hill, when did you let Mr. Clark have that gun? A. It was Saturday morning before Christmas, the weekend before Christmas.

Q. And what kind of gun was it you let him have? A. A .25 automatic.

[560] * * * Q. Did Mr. Clark let you have that pistol back? [561] A. No, sir.

Q. Has he to this day let you have that pistol back? A. No, sir, I haven't seen it since that day.

TESTIMONY OF DR. ROBERT KENDALL

Direct Examination

By General Henry:

[573] * * * Q. Please describe to the jury what you did to perform this autopsy? A. Well, I went through the protocol that I described. I examined externally the body of Joy Faulk.

Q. Explain to the jury what if anything that examination revealed? A. Well, my main abnormalities were around the head, neck, and shoulder region. I found three bullet entry sites, one into the left eye about right here, an entrance wound, and I found the exit wound right back here. I also found a bullet entry here and traced it down and found a bullet lodged.

Q. You are pointing to certain places. If you would please describe for the record where you found these wounds. A. Okay the first and most evident one was the entry in the left eye and then it existed right back here in the right occipital area.

[574] Q. Can you describe the condition of the left eye? A. Well it was replaced with just a big old hematoma. It was just kind of drooping out.

Q. What is a hematoma? A. A hemorrhagic change, just a blood clot.

Q. What is that caused by? A. Well, usually by trauma.

Q. And trauma is what? A. Injury. Injury resulting in bleeding caused by a local area blood clot.

Q. Is that your opinion that the trauma caused the injury to the eye? A. Yes.

Q. Where did you observe the second wound? A. In the cheek below the eye. There was an entry wound here and I followed it down and found the bullet, which extended down the left posterior portion of the back of the neck here, and I was able to retrieve that bullet.

[575] * * * Q. Where was the third wound that you found? A. The third wound was in the left shoulder, right over here and I traced this one across the back and lodged just on the other side of the spine just about level with the shoulder blades.

Q. Was it to the right of the spine or to the left of the spine? A. It went to the right of the spine, left to right.

Q. On what side of the body were all three of the entrance wounds? A. All of the entry wounds were on the left side of the body.

Q. What did you do with the bullet? Did you take the bullet out from the third wound you're talking about in the shoulder? A. Yes, and I also gave that to Dave Grisham.

Q. Did your examination of the cites [sic] of these wounds reveal anything else? A. Yes, they did. There were powder burns around the—especially the one around the eye, and I also found powder burns on the right hand.
[576] Q. Can you, based upon your training as a pathologist to a reasonable degree of medical certainty and in your training, explain those powder burns on the right hand? A. Well, you know, a person when they're defend-

ing themselves they will usually put a hand up. This is not uncommon. You will see marks and, usually if they're righthanded, too, they will use whatever hand is dominant to protect themselves.

Q. Can you give any description of the powder wounds on the hand? A. Well, there were more powder burns on the hand than there were actually around the eyes or the face.

[577] * * * Q. After you complpeted the autopsy of Joy Faulk did you perform an autopsy on Charles Browning? A. I did it immediately after finishing the Joy Faulk one.

[578] Q. Do you refer to the first part of your gross examination as your external gross examination? A. Right, external gross examination. I looked at the body again and I found one bullet entry site right down here below the eye, just a little bit off—about right here.

Q. Would it be fair to say you are pointing to the left cheek bone? A. Left cheek, right.

Q. Did you determine what the bullet did if anything after entering the body? A. It didn't leave the body, we determined that. I went through my gross examination including opening the head and I found that the bullet had entered the lower part of the skull and had also gone right through the center of the brain, again disrupting his brain stem. His central areas of the brain were also obliterated just like Joy Faulk's brain except that his bullet lodged right back here in the right occipital area and stayed in the brain. I removed it and gave it to Dave Grisham like I had the previous bullets on the lady.

Q. Did your autopsy reveal anything else? A. No, he was basically other than that a healthy young man.

Q. Could you describe the area around [579] entrance wound for the jury, sir? A. Okay, he also had some powder burns but also there was a bruised appearance around the actual entry wound.

Q. Based upon your training as a pathologist, then, are you able to offer any opinion about how close this individual was to the gun he was shot with? A. He was quite close.

Cross Examination

By Mr. Scott Daniel:

* * * Q. Doctor, if I understand, what you're saying is that it's your opinion that these victims were shot virtually at point-blank. You said the hand of one was put up and the other one I believe was shot in the head; is that correct? [580] A. They were both shot in the head. If it was not point-blank, it was very close.

Q. The gun was placed right at them and fired right at them, not from a distance? A. Yes, close enough so you could see them very well I am certain.

Q. And you could see the powder burns from the discharge of the gun itself? A. Yes, sir.

Q. So it had to be a very short distance? A. Very close.

FURTHER TESTIMONY OF TERRY HILL

Direct Examination

By General Dotson:

[602] * * * Q. Now, how did that gun get out of your possession? A. How did it?

Q. Yes, sir. A. Clicker came by I believe the following Saturday morning and asked if he could borrow a pistol. He told me his gun had been stolen.

Q. Was this before Christmas? A. It was—yes, sir, it was a day or two before, I guess. It was Saturday.

Q. And you loaned him the gun and what shells were in the clip? A. Yes, sir.

Q. And you don't know how many were in there? A. I don't have no idea.

Q. Did you say at one time it could have been full, you just didn't remember? A. Yes, sir; I don't know.

[603] Q. How many shells did it hold? A. Seven or eight.

* * *

[616] * * * Q. Did you meet Mr. Clark and the investigator at Jerry's Restaurant? A. Yes, sir.

[617] * * * Q. Did Mr. Clark at that time deny that you had loaned him that gun? A. No, sir.

Q. After telling him what kind of gun you had loaned him what other questions did the investigator ask you in the presence of Mr. Clark? A. Well, we just talked about the gun. He asked me where was I at that night, which I told him.

[618] * * * Q. Now, was the ballistics discussed as to whether one bullet matched with the other bullet or not? A. Yes, sir.

Q. What if anything did he tell you at that time in the presence of the Defendant? A. He told me that didn't match up.

Q. Did he tell you where he got that information? A. No, sir.

Q. Do you know why he told you that? A. No, sir.

Q. Did he know that you were going to be a witness in this case? A. I'm sure he did.

Q. Did he ask for anything else connected or related to that pistol? A. He asked me if I had the box, if it came in a box.

Q. What did you tell him? A. I told him that I did.

[619] Q. Did you let him have it? A. Yes, sir.

Q. Did you have it with you at that time? A. No, sir.

Q. How did you get it? A. The next morning Clicker came by and picked it up at my house.

Q. At that time did Clicker deny that he had borrowed your gun? A. No, sir.

Q. 'Till this day has Clicker ever given you any explanation why he did not return that gun to you? A. No, sir.

Q. Have you asked him about it? A. No, sir.

Q. But he has never discussed to you where that gun is at this time? A. No, sir.

Q. Has he ever told you that it was stolen from him? A. Yes, sir, he told me it was stolen.

Q. Did he say when? A. I don't think so. He just told me that it was stolen. I think he mentioned it that night that we talked at Jerry's, it seems like he said something about it. [620] I asked him about it and I think he told me it was stolen.

Q. The private eye asked who? A. Clicker, you know, about the gun.

Q. Did he tell the private eye when it was stolen? A. I don't believe so. He just said, you know, after he borrowed it from me.

Q. But he had never told you that? A. No, sir. I had never questioned him about it.

Q. And to this day he has never told you that? A. No.

Q. But he did not deny that you loaned him this pistol? A. No, sir, not to me because, like I said, I hadn't asked him about it.

Q. And that is the pistol that you bought and loaned to him. A. The serial numbers are the same, yes, sir.

Bench Conference

[774] * * * [THE COURT:] What included offenses, Mr. Daniel, would you suggest that the Court charge upon?

MR. DANIEL: I think, your Honor, that it needs to charge upon all of the homicide offenses.

THE COURT: Even involuntary?

MR. DANIEL: Even involuntary.

[775] * * * THE COURT: You know, I'm supposed to be a criminal law expert and I guess I am because I recognize there are all sorts of inconsistencies and what you might characterize as errors in our present body of law. Now, for example, we have cases holding that you should only charge on included offenses that the evidence really presents and yet there are all kinds of cases in the books saying that all four grades of homicides should be charged on any first degree murder charge. And yet you could never have someone committing first or second degree or voluntary manslaughter and at the same time have the facts constituting involuntary manslaughter as a part of the greater offense because involuntary manslaughter by definition is an accident. And yet there are all sorts of cases in books saying that all four should be charged.

I will charge all four if the defense insists upon it out of an abundance of caution because it would be silly to try this case and make that kind of error and there are cases holding that you are entitled to it.

MR. DANIEL: That's my understanding of it. I understand the argument you are making, I have heard that argued, but at the same time I don't want to fail to request a charge that would—

[776] * * * [THE COURT:] Now, let me ask you this: There has been some rather tangential indication that there might be a drunkenness factor in the defense and of course there is a charge that reduces what would otherwise be first degree murder to no more than second degree in the event of an effect. Would you like that charge?

MR. DANIEL: Yes, I would, your Honor.

TESTIMONY OF DR. JOHN GRIFFIN

Direct Examination

By Mr. Scott Daniel:

[795] * * * Q. Now, Doctor, did you at my request have occasion to examine Stanley Clark? A. Yes, sir, I did.

Q. And what was the purpose of your examination? A. To render a psychiatric opinion.

Q. Now, would you please tell the Court and jury when and where you examined Mr. Clark? A. I saw Mr. Clark in my office on the 4th of June. Then I admitted him to the hospital, Parkview Hospital, on the 6th of June and spoke with him there and discharged him from the hospital on the 8th of June.

Q. So he was actually under your care and evaluation for a period of some four days; is that correct? [796] A. Yes, sir.

Q. Would you tell the jury what your examination consisted of? A. My examination consisted of a lengthy conversation with Mr. Clark, eliciting what information I could from him about his background and about recent events in his life and about events pertinent to his relationship with his attorney. I performed a physical examination on him. I had a psychologist come in to assist me by doing psychological testing and I administered a medication to help put him in a deep state of relaxation so that I could question him some under those circumstances. And I had another psychologist who is experienced in hypnosis work with Mr. Clark in hypnotizing him and asking him some questions while he was in a hypnotic trance. I also had another psychiatrist colleague come in

and assist me with some of the interviews when he was under the influence of the medication.

Q. All right. Now, will you describe to the Court and jury exactly how you went about examining Mr. Clark psychiatrically, step by step? A. I'm not sure what you mean by that question.

Q. Well, the sequence of what you did. A. On the 4th of June I spent approximately [797] two hours with him in my office and at that time the entire examination consisted of a lengthy conversation with him with me listening to what he had to say and occasionally asking me specific questions to clarify information. When he was in the hospital I spoke with him some more in that manner. I performed a physical examination and focused a little more on possible physical problems he may have had in the past. That was on the 6th of June. On the 7th of June another psychiatrist and myself administered a medication that made Mr. Clark very sleepy and that morning we spent approximately two hours with him questioning him particularly about events in relationship to legal proceedings. And later on in the afternoon we came back and did a similar thing, trying to put him into an even deeper state with the medication. We spent approximately two hours then also. The next day, June 8th, I saw him briefly and released him from the hospital. While he was in the hospital the psychologist saw him and administered tests. The other psychologist saw Mr. Clark on two occasions, the last time being this past Sunday when he administered the hypnosis in conjunction with some special type of biofeedback equipment [798] in order to monitor just how deep a trance Mr. Clark was able to go into.

Q. Did you have occasion to see and study the medical or hospital report of Mr. Clark while he was in Parkview? A. Do you mean previous medical reports?

Q. No, the ones during the period that he was hospitalized? A. Yes. In fact, I was the one who contributed most of the information to that. It was my responsibility to fill out the records.

Q. Did you also see and have occasion to study the psychological testing reports of Dr. Michael Campbell? A. I spoke with Dr. Campbell personally and read the written report he submitted to me.

Q. Dr. Griffin, as a result of your examination and your investigation and your history and background—your training, skills, and experience as a psychiatrist—were you able to formulate an opinion as to whether or not Mr. Clark was on December 30, 1978, between the approximate hours of eight and ten o'clock, suffering from a mental illness at that time? A. Yes, I was able to reach an opinion.

Q. What is that opinion? [799] A. My opinion is that Mr. Clark was suffering from depression.

Q. And would you describe what that is? A. Depression can be defined in a number of ways. In the most basic sense it is a mood where one feels very low in spirits, feels worthless, has low feelings of self-esteem, and doesn't care very much about himself or what happens to him.

Q. Are you familiar with the acts Mr. Clark is charged with in this case— A. Yes, I am.

Q. —the acts charged in the indictment? A. Yes.

Q. Now, I will ask you, Doctor, for the sake of your examination and opinion and testimony here to assume

that Mr. Clark committed those acts. Based upon that assumption do you have an opinion as to whether the mental illness that you found was such as to render him substantially incapable of conforming his conduct to the requirements of the law he is charged with violating? A. Yes, sir, I have an opinion about it.

Q. And what is that opinion? A. My opinion is that his mental illness was such that it rendered him substantially incapable of conforming his behavior to the requirements of the law.

[800] Q. Now, Doctor, would you tell the jury whether or not this was a condition that you found to be of long-standing? A. Yes, sir, I think the condition is very long-standing with Mr. Clark and that the condition has periods, depending on circumstances that happen in his life, where he becomes even more depressed than he usually is.

Q. I believe, Doctor, you said while you were evaluating the accused you had him physically hospitalized at Parkview; is that correct? A. That is correct.

Q. I will also ask you if as a result of your evaluation you have an opinion as to his memory. Assuming again that Mr. Clark did commit the acts as alleged in the indictment, do you have an opinion as to whether or not he has any memory or recall of those events? A. Yes, I do have an opinion.

Q. What is that opinion? A. If Mr. Clark committed the alleged acts it is my opinion that he has no conscious recollection of having done so.

Q. Would you give the basis of that opinion? A. I base that on my lengthy conversations with him when he was not under the influence of medication at all and I base

that on the fact that while he was under [801] the medications at no time did he ever indicate in even the slightest way that he had committed those acts. There were times during the interview when I very strongly confronted him with information of the type to where I was trying to really push him to admit. And I tried everything that I ethically could to see if there were any holes in his story or if there were any discrepancies in what he was saying and he steadfastly maintained he did not do it.

Q. Doctor, do you have an opinion as to whether Mr. Clark at the time could have been faking or simulating the condition as to whether or not you would have discovered that? A. Faking that he did not know or faking that he was depressed?

Q. Faking that he did not know of any events such as those charged in the indictment? A. It is my opinion that he was not faking. It is my opinion that he was telling the truth, that he really did not know that he really did not do it—that he believed he did not do it.

Cross Examination

By General Dotson:

Q. Doctor, did you question Mr. Clark about whether he did this or not — an admission on his part that he [802] did would send him to the penitentiary, wouldn't it? A. I assume so, yes, sir.

Q. So did you expect him to admit it? A. In some ways I did, yes.

Q. In what ways did you not? A. In what ways did I or what ways did I not?

Q. You said in some ways you did, indicating there were some ways you didn't expect him to tell you the truth. Now what were those ways? A. Ask me that question again, please.

Q. For the third time, you said in some ways you would have expected him to have told you the truth, indicating there were some ways you would have expected him not to tell you the truth. What were those ways that you would have expected him not to have told you the truth? A. Well, I think what you just said, that he might have been afraid to say that he did it because that would mean that he would go to the penitentiary.

Q. So did he have some reason to tell you he did not do it? A. Yes.

Q. Did he have any reason to admit to you that he did? A. I think so.

[803] Q. What reason would he have had to admit it to you? A. That his attorney could better assist him.

Q. But you just said if he admitted doing it that would send him to the penitentiary and his attorney's position is to keep him out? A. I think there are a lot of mitigating circumstances.

Q. What are those? A. If someone admits that they do something then the attorney can look for some of the reasons and can assist the person's defense.

Q. Or he can look for a different defense, can't he? A. That's true also.

Q. Now you have stated that you examined for the state and for the defendant? A. That is correct.

Q. Have you ever examined a defendant at the defendant's request and testified against him for the state? A. No. sir, I don't think so.

Q. Are you being paid to testify today? A. Yes, sir. [804] Q. Would you be here if you were not being paid? A. No, sir.

Q. You were hired to give favorable testimony for this person, were you not? A. I was hired to give testimony.

Q. Doctor, is it not a fact that of all the psychiatrists that you could take one identical set of facts and another psychiatrist could take the same set of identical facts and you could come up with one conclusion and he could come up with another one? A. I don't think that is a fact, no.

Q. Could that happen? A. It could happen.

Q. Has it ever happened? A. I think so.

Q. Are you familiar with studies that say if two psychiatrists study the same set of circumstances that in sixty percent of the cases they will use different descriptions of the diagnoses? Are you familiar with a study similar to that? A. I don't know that exact percentage, but, yes.

Q. Explain to the jury what that means. A. There were some studies done between [805] psychiatrists who reside in England and psychiatrists who reside in the United States. They were asked to evaluate patients who had certain types of severe symptoms or who had difficulty controlling their behavior and understanding what reality was. And they found that sometimes the psychiatrists said the patients were schizophrenic and that at

other times the psychiatrists would say that the patients had manic-depressive illness. The conclusion of the study was that American psychiatrists tend to use the diagnosis schizophrenia more often and British psychiatrists tend to use the diagnosis manic-depressive illness more often in certain types of persons.

Q. Now, tell us about the studies made among American psychiatrists. A. I don't know of a particular study that you are referring to.

Q. Is it not accepted that the percentage is basically the same in the United States? A. No, not in my opinion.

Q. It is not? A. No.

Q. Doctor, in addition to a psychiatrist you are a physician? A. Yes, sir.

Q. Did you make a physical examination of [806] Stanley Clark? A. Yes, sir.

Q. Did you determine that he did or did not have organic brain damage? A. That's a very difficult question.

Q. If you don't know the answer—did you or did you not?

MR. DANIEL: Your Honor, let him explain his answer.

THE COURT: Yes, Doctor, you may explain your answer.

THE WITNESS: Mr. Clark suffered significant head trauma in 1975 or 1976, I think it was 1976, and he was unconscious for several hours after that head trauma. There were no real obvious residuals from that.

Q. What does that mean? A. He doesn't have any paralysis; he doesn't have any obvious speech impediment; those sorts of things by looking at someone you could tell. But he does have chronic headaches which have been much worse since then and there are syndromes of illnesses described in the medical literature quite frequently whereby people will have a great deal of difficulty with headaches as a result of serious head trauma like that.

Q. What machine did you use to determine [807] that he had chronic headaches? A. I didn't use a machine.

Q. How did you determine that? A. By his statement that he has chronic headaches.

Q. How do you that he has them? Do you know that he was telling you the truth? A. No.

Q. If he was not telling you the truth about that would that have affected your decision in any way? A. If I knew for sure.

Q. Assuming on one hand what he told you was not true about the chronic headaches and on the other hand that that was untrue, that he actually didn't have chronic headaches, would that have entered into your decision as to what his condition is or was December 30th, 1978? A. No.

Q. Why did you make that determination? A. Your question was about organic brain syndrome.

Q. No, sir, we— A. My comments about the diagnoses on December 30th was depression.

Q. Okay, thank you for reminding me. Let's get back to the organic brain damage. I asked you a question

[808] and you asked if you could explain it. I'm not for sure that the jury understood what your explanation was. Would you tell them whether you found that there was or there was not any organic brain damage? A. I think it is a question mark. I can't say certainly he does not have organic brain damage and I can't say certainly that he does.

Q. Had you known that would that have helped you in your evaluation of him, whether he did or did not? A. It could make some things clearer if I knew definitely that he did or did not have organic brain damage.

Q. Did you make a physical inspection of him, examination of him? A. Yes, sir, I did.

Q. Did you find anything physically wrong with him? A. Yes, sir, he has weakness and decreased sensation in his left upper extremity as a result of an injury to a nerve.

Q. Would that affect his brain? A. No.

Q. So that didn't enter in your evaluation of him? [809] A. It was a fact that I noted.

Q. How did that affect what his mental condition was December 30th, 1978? A. I don't think that particular injury had any significance.

Q. So we can completely disregard that? A. If you wish.

Q. Well, did you consider it or disregard it in your evaluation? A. I put together all the information that I elicited from the physical examination as part of my record.

Q. But we're not concerned about from here to down, are we? Aren't we just concerned about what's up here, doctor? A. Sometimes you need to be concerned about what's from here down because we have feelings about what's going on from here down.

Q. Tell me about how from here down on Stanley Clark affected him on December 30th, 1978, as to what was up here? A. I don't know.

Q. You considered it? A. Yes.

Q. How did you consider it in his behalf, [810] favorable to him? A. I considered—my conclusion was that his arm injury had no particular significance to the events of December 30th.

Q. He had this arm injury a month, two months, five months, or six months before? A. Several years.

Q. And he has had it since that time? A. Yes, sir.

Q. And he has had it since he has been here in the courtroom? A. That is correct.

Q. In addition to that did you make any other physical examination of this Defendant? A. That one day was my only physical examination of Mr. Clark.

Q. So physically you didn't see anything about him then that would affect his sanity? A. That is correct.

Q. Now, besides your physical examination and your conversation that you had with him, is there anything you can turn around and face this Defendant and point toward him now and show this jury as to why they would be justified—is there anything physically about him that would let this jury know that he is mentally insane? He's not that way now, [811] is he? A. He is depressed.

Q. But is that a mental illness? A. Yes, sir, it is.

Q. Has he been depressed all of his life? A. Most of his life.

Q. Is there anything you can look at and tell this jury that they can look at this person and see and say as a result of the way he looks that he is mentally insane? A. What do you mean by insane?

Q. Your definition. A. It means different things to different people. Insane is not a word that is defined—

Q. Does he have anything that you can show this jury by looking at him to see a mental illness siting over there? A. They might be able to see some of the features of depression but the best way to tell is to spend a lot of time talking to him.

Q. Doctor, how long after this event was it before you talked with Mr. Clark? A. I first saw Mr. Clark on the 4th of June.

Q. How long was that after the event? A. Well, the event was—

[812] Q. Five months after? A. —on the 30th of December.

Q. Would your evaluation be any different—would it have helped if you had evaluated him in February or March rather than in June? A. I don't think it would have made any significant difference. I'm sure things would have been a little different.

Q. Is it not true that the further you get away from an incident the more likely you are to forget about it? A. Not always; sometimes the further people get away from that type of incident the more likely they are to remember.

Q. In making this determination did you talk with any of his friends? A. No, sir, I didn't.

Q. Did you talk with anyone besides the Defendant? A. I spoke with his attorney.

Q. Were you given any of the facts surrounding this crime he is alleged to have committed? A. Yes.

Q. Did you talk to the Defendant himself about this crime? [813] A. Yes, sir.

Q. Did he give you an explanation as to what his activities were that day? A. Yes, sir.

Q. What did he say his activities were on the day of December 30th, 1978? A. He described getting to bed about two or two-thirty in the morning and rising about six or so that day.

Q. Okay, at that point is there anything there that indicates depression or mental illness? A. Just those facts alone, no.

Q. Then what did he say he did? A. He did some work around the farm that morning. I think he went out and fed some of his sows.

Q. Okay, is there anything there that indicates mental illness? A. The activities *per se,* no.

Q. That coupled with what he did, the prior incident, does those two coupled together indicate a mental illness? A. No.

Q. Then what was the next thing that he did? A. He went to town and did some shopping there. I think he got some floor mats for his car and wanted [814] to pick up some feed.

Q. Does that indicate a mental illness, coming to town and trading as you and I have done? A. No.

Q. Does that taken with the first two that you have described indicate mental illness? A. No.

Q. What was the next thing that he did? A. Well, he drank some more. He had been drinking alcohol since the early part of the day, beer, vodka—

Q. How much? A. It is difficult to say just how much, but over the period from—say, six in the morning—

Q. Why is it difficult to say how much? A. Because I had trouble keeping count. It was—I think it was a minimum of three six-packs of beer per day and at one point he said it was six.

Q. He drank six six-packs of beer that day? A. Yes, sir.

Q. That one day? A. Yes, sir.

Q. And you believed that? A. I don't know.

Q. You had to believe everything he said [815] for you to make a proper and correct evaluation, did you not? A. No, sir, I don't.

Q. What part of that don't you believe? A. Well, when he started talking about the fifth and sixth six-pack he was drinking at apparently around seven, eight, nine o'clock at night, uh—

Q. Wait, we don't have him that far yet, do we? Don't we have him in town buying some floor mats? A. Oh, you want to go back there.

Q. How much had he had to drink until then? A. When he was in town it was kind of late in the afternoon

and by then as best I could tell he reported having drunk three or four six-packs and a bottle of vodka.

Q. Did you believe that? A. Yes, at the time I did.

Q. Do you believe that he could drink that much and function as an ordinary person? A. I believe that he did function—I don't know that it was as an ordinary person.

Q. How much vodka did he drink? A. It was either a half pint or a pint; I'm not sure which.

Q. So by three or four in the afternoon he had had three six-packs of beer and either a half pint or a [816] pint of vodka? A. Yes, sir.

Q. And then what did he say he did? Is there anything there that indicates mental illness? A. Yes, sir.

Q. What was that? A. That type of drinking. Drinking that much alcohol can be a symptom of depression.

Q. I'm not asking about a sympton, though, but that's not in and of itself a mental illness? A. Alcoholism is considered an illness, yes, sir.

Q. But one occasion of drinking that much is not, is it? A. Oh, I think it is.

Q. Then what did he do, Doctor? A. He went back home at five or six o'clock and did some work with the animals, feeding them.

Q. He recalled that? That's not an indication of amnesia, is it? A. No, sir, it's not.

Q. Is than an indication—going back and feeding the animals at the appointed time or the proper time—of mental illness? A. No, sir.

[817] Q. What did he do then, Doctor? A. He watched some television—I think he watched the Hee Haw program—and left the home sometime after seven.

Q. Watching television, that's not an indication of a mental illness, is it? A. No, sir.

Q. Then what did he do? A. He started driving around in his truck and drinking beer.

Q. Did he tell you where he went? A. He went by a tavern; I don't recall the name of it. A lot of those names I just don't know so—

Q. Did you not bring your notes with you? A. No, sir, I don't have them with me.

Q. Is there any reason that you didn't bring them, Doctor? A. I have never taken notes with me when I have testified.

Q. Do you think the jury would be entitled to know just exactly what he told you rather than just what you remember? Don't you think they're entitled— A. My notes are not that comprehensive. I don't tape record my sessions and I don't write down verbatim what someone says.

[818] Q. Don't you think, though, that they would be entitled to that from an expert witness? A. I don't know; that's a legal question.

Q. I'm asking you as your personal opinion as an expert? A. What is the question?

Q. Just what I've asked you, If you don't think they would be entitled to know what you wrote down that would be better than just part of these things that you don't remember? A. I don't think that has particular relevance.

They can find out from other sources just what he was doing that evening.

Q. Do you think they should know that? A. Yes, sir, I do.

Q. Would it help them to know that in their evaluation as to whether you are correct and anyone else is correct? A. Yes, sir.

Q. If that information is available it should be given to them. A. Okay.

Q. Do you agree that it should be? A. I don't think my notes would help, no.

Q. Do you think any information that would [819] indicate what he was doing that night they should have benefit of? A. Yes, sir, I agree with that.

Q. Now, where did he say he drove around? A. He drove around toward Shelbyville.

Q. What did he do in Shelbyville? A. It's very vague as to just what he was doing. His description to me as to what he was doing was vague.

Q. Well, what vague description did he give you? A. His description is that he was drinking beer and he was —in the earlier part of his driving he was looking for an old girlfriend.

Q. This is in Bedford County or Shelbyville? A. That was part of the time he was there.

Q. How much beer had he had to drink up to that point? A. He was at five six-packs and starting on his sixth one.

Q. Then where did he go? A. Just driving around. I don't know the areas that he was describing and there was some confusing statements that he made under the influence of the medication in terms of where he was at a particular point.

[820] Q. So the medication you gave him did affect his ability to think clear and reasonably, didn't it? A. Yes.

Q. So rather than assist this jury in telling us what he was doing, it has put you in a position to say that he was somewhat confused and thereby preventing you from telling the jury what he told you? A. No, it's my opinion that I received—

Q. No, I'm not wanting your opinion; I want to know what he said.

MR. DANIEL: Your Honor, he asks one question and then cuts him off before he can answer it.

THE COURT: Yes, I sustain the objection. Doctor, if you remember the question you may complete your answer.

THE WITNESS: Your Honor, at this point I don't remember what the question was.

THE COURT: Would you like to have the court reporter read it back so you can complete your explanation?

THE WITNESS: Please.

(The last two questions were read.)

Q. Then the medication you gave him did affect his ability to think clear and reasonably, didn't it? A. Yes.
[821] Q. Therefore he was not able to completely tell

you all of the things that he did that night, was he? A. That is correct.

Q. Would it not have helped you, Doctor, for you to have left him in a position so that he could have told you everything that he did? A. Yes, sir, that would have helped my evaluation.

Q. Why did you not do that? A. I tried to. He was unable or unwilling to fill in all of the gaps.

Q. Are you telling me that you questioned a man and he was unwilling to fill in the gaps and you were there to help him? A. I said he was unwilling or unable.

Q. Yes, sir, unwilling or unable. Can you tell this jury which one it was? A. It's my opinion he was unable.

Q. As a result of the medication that you gave him? A. No, sir, I think the medication would have helped him say more than if he had not had the medication.

Q. But it got to a point where after he was in Shelbyville he didn't remember anything that happened [822] after that? A. No, sir, he remembered some things.

Q. What did he remember after that? A. Driving around.

Q. Where? A. Those are the—I don't know the map of the area that well.

Q. Did he not tell you where he drove around? A. He mentioned some of the names.

Q. That's why I say, Doctor, had you written down as you did and brought your notes you could have— A. I didn't write them down.

Q. You didn't feel like it was important. A. It's not in my notes.

Q. You didn't think that was important? A. Most of this was being done when he was under the influence of medication. The other psychiatrist who was with me knows the area better than I do and he handled that part of the questioning.

Q. But a moment ago you said the medication had him confused so he could not reason properly, didn't you, Doctor? A. I don't recall saying it like that, no, sir, I don't.

[823] Q. How did you say it? A. I said the information became somewhat confusing at that point. I didn't say if it was due to the medication or not because I think that more than the medication was involved there.

Q. Where did he say he went after that, Doctor? A. After about eight o'clock at night he described driving around the countryside; no place in particular, and not able—I couldn't follow his itenerary [sic]. And the next thing, the police are behind him somewhere around eleven or midnight. And that's it in terms of his memory.

Q. Does he remember what happened after the police got after him? A. He remembers talking to the police or he told me remembered talking to the police, being puzzled as to why the police had stopped him.

[824] * * * Q. Doctor, did he tell you what he did immediately upon seeing a member of the law enforcement agency? A. No, sir.

Q. Would it have helped your evaluation and determination to have known what he did? A. It would give me more information; certainly that would be helpful.

Q. If it was brought to your attention or if it was proven that just prior—or if one of the facts was that just prior to getting to his house he was in the process of slowing down to turn into his driveway and met—was not being followed but met a policeman and rather than go ahead and pull into his house he sped off past his house—did you have that fact available to you? A. No, sir.

[825] * * * Q. Were you aware of that fact? A. No, sir.

Q. Would that have helped you in your determination? A. It doesn't change my opinion.

Q. If in fact after the police officers turned around and pursued him with the emergency lights on and attempted to get him stopped, would that have changed your opinion at all? A. No, sir.

Q. If upon being stopped he was in a cool, calm manner would that have affected your opinion? A. No, sir.

Q. Doctor, if it were brought to you attention that a week or ten days before this took place he borrowed a .25 automatic pistol, would that have affected your decision? A. I had awareness that he had a pistol.

Q. What kind did he have, sir? [826] A. I don't remember the caliber of it. I just remember that he had a pistol. He told me it was missing from his house, that he had borrowed it earlier in order to protect himself from possible trespassers. He was frightened that someone might hurt him sometimes when he went out in the fields.

Q. Is that an indication of mental illness, self-protection? A. It could be. It could be indicative of being paranoid; I don't think it was in this one instance.

Q. Doctor, if you knew that he had threatened to kill the particular person that he did on three different occasions to her father if he ever caught her out with anyone would that have affected your decision? Did you have benefit of that information? A. At the time I saw him, no, I did not know that he had threatened to kill the deceased.

Q. Would that have entered into you determination? A. Certainly.

Q. If it was shown on a Monday night of the same week that the victim was killed he told one of his best friends, or one of his friends, that if he caught her out with anyone he would kill her—did you have benefit of that information? [827] A. No, sir.

Q. If before that he had been told by this same person that she was afraid for them to be caught by her ex-husband, were you made aware of the fact that he pulled a gun out and said, "We don't have to worry about that"? A. No, sir.

Q. Were you not made aware of that fact? A. No, sir, I didn't know about that.

Q. Were you made aware of the fact that he had threatened her on some other occasions? A. I was aware of the fact that they had fought on some occasions, that their relationship had been stormy, with being together awhile and separated.

Q. Is that an indication of mental illness, disturbance in a family? A. No, sir.

Q. Would these facts that he had threatened someone in the past have helped you in your diagnosis? A. It

wouldn't change my diagnosis; it would have helped in understanding him, yes.

Q. Did you talk to any merchant or anyone who had seen him in [sic] numerous occasions who would have been able to have given you a picture as he was seen by other people—was that given to you? A. No, sir.

[828] Q. Would that have helped? A. Yes, sir.

Q. Did you discuss him with his mother and father? A. No, sir.

Q. Would that have helped you if they had given you some input into it? A. Yes, sir.

Q. Does the Defendant need hospitalization at this time? A. No, sir, I don't think so.

Q. Does he still have the state of depression today that he had December 30th, 1978? A. Yes, I think he is still depressed.

Q. And a state of depression is a mental illness? A. Yes, sir.

Q. Do you have anything to base this depression upon other than what the Defendant himself told you? A. Yes, sir.

Q. What is that, sir? A. My experience in working with people as a psychiatrist.

Q. Forget about what he told you, then. [829] You have had a lot of experience. When you walked in and set him in front of you, did that experience tell you that he was or that he was not mentally insane? It didn't, did it?

Your experience didn't tell you anything when he first sat in front of you, did it? A. No, sir, I had to talk to him first.

Q. So your opinion is based solely upon what he told you. You just applied your experience in coming to the opinion that you arrived at? A. No, sir, that's not correct.

Q. It's not? A. No.

Q. What other than the conversation you had with him? A. The psychological testing by Dr. Campbell.

Q. The psychological testing—is that a question of answers? Is that conversation? A. Partly.

Q. Other than that what is it? A. Written material.

Q. Who answers that written material? A. He does.

Q. Then that is conversation put in the form of writing, isn't it? A. Yes.

[830] Q. What else did you have besides that? A. Well, as a part of that psychological testing there are also abstract figures that are given to a person that they comment on and it gives a lot of information about a person.

Q. Is that comment, though, conversation again? A. Partly.

Q. Doctor, did you have anything that gives you the basis of your opinion other than what you got from the Defendant? A. I had some information that he had lost thirty-five pounds of weight, that he had been doing some strange things with members of his family, that he tried to kill himself. Part of that information was furnished to me by Mr. Daniel.

Q. You don't know whether it's true or not, though, do you? A. I believe it is true.

Q. But if it was untrue, then, your diagnosis could have been wrong? A. No, I think my diagnosis is correct.

Q. Isn't it a fact that no matter what facts that I elicit from you you will not admit to this jury that you could have made a mistake? [831] No, sir, that is not correct.

Q. Could you have made a mistake? A. I could have but I didn't.

Q. You could have but you didn't? A. Yes, sir.

Q. You have no way of being positive, though, do you? A. I'm positive.

Q. Other than you, though, we don't have any way of being positive you are right, do we? A. It is my opinion. It's whether or not you believe my opinion.

Q. Is there anything that we can see, touch, smell, or hear from this Defendant that will show this jury that is mentally insane? Just yes or no and then you can give an explanation. A. No.

Q. There is nothing, is there? A. No.

Q. Okay, Doctor, if a policeman was standing at this scene when this crime occurred, do you feel like this Defendant, had he been the one that did it, would have committed it? A. I don't know.

Q. Now, you have given an opinion about [832] everything else. Is there some reason that you can't give an opinion about that based on the background study you have done on him? A. That's based on predicting.

Q. Would you predict as an expert? A. I'm not an expert in predicting; I'm an expert as a psychiatrist.

Q. All you've done is predicted what he was five or six months ago, isn't it? Didn't you predict? Isn't that what you— A. I have described my opinion as to what his mental state was then.

Q. Don't predict, give us your opinion what he would have done if a policeman or five policemen were standing nearby. A. I suspect he wouldn't have done it but I don't know.

Q. Then he did know right from wrong, didn't he? A. Yes, sir, I think he did.

Q. And he still knows right from wrong? A. Yes, sir, I think he does.

Q. Now, that being the case, how can you say that he does not appreciate the wrongfulness of his conduct?

MR. DANIEL: I don't believe he ever [833] testified he didn't appreciate the wrongfulness—

THE COURT: I sustain the objection. His answer was that he was—

GEN. DOTSON: Yes, sir, I understand.

Q. Then how can you say if there were policemen there he would not have done it and he knows right from wrong but he could not have conformed his conduct to the requirement of law? A. That's based on my opinion. It's based on my evaluation of him where he has absolutely no recollection of doing that and it's based on the fact that he had a very intense relationship with this woman. He

was very depressed and upset as the relationship was breaking up. And I think there were [sic] a tremendous amount of feelings he was holding inside.

Q. But the point I'm asking you, though, is, agreeing that you have given your opinion about his depression and you claim that to be a mental disease or defect and you have said that he knows the difference between right and wrong and that had there been five policemen there he would not have committed the act that was committed, tell me why you can say then that he could not conform his conduct to the requirement of the law. Had they been there he would not have committed this offense and he would not have [834] violated the law as you said he wouldn't. Therefore he could have conformed to the requirement of the law, couldn't he? A. No, I think you're looking at this in an all or nothing manner, and I don't think functioning is all or nothing. He was obviously able to drive a truck; he was obviously able to navigate his way around on the road such that he could come home. There were certain areas of his functioning that he could not control his behavior; there were other areas that same night that he could.

Q. But you're saying though that he knew right from wrong and that if policemen were there he would not have committed that offense. A. That is correct.

Q. All right, forgetting about anything before and after just to that point, then would you say at that time, when the crime was committed with five policement there, he could have conformed his conduct to the requirement of law if there were policemen there? A. He probably would have not—he probably would have conformed his conduct if policemen were there. That's my guess.

Q. That's your guess. A. (Witness nods in the affirmative.)

Q. So now it comes down to the fact that there was or was not law enforcement officers there is why [835] he committed the crime? A. I don't know he committed the crime.

Q. If he did commit it? A. That's a big if; I don't know if he did.

Q. Assuming that he did? A. Okay.

Q. Then he does not meet this second test, then, does he—that he could not conform his conduct to the requirement of law, does he? A. I think he does.

Q. Based on what we have discussed, though, he would not at that point, would he? A. I think he meets the test of being unable to conform his conduct because policemen were not there, if he did it at all.

Q. Okay. Your Honor, I'll apologize for this, but—You said if policemen were there he would not have done it? A. Yes, that's what I said.

Q. And he knows right from wrong? A. Yes.

Q. So at that point he could have conformed his conduct to the requirement of law? A. If policemen were there, yes.

[836] Q. Does that not mean that—not whether they were or they were not—you have just stated at that point that he could conform his conduct to the requirement of law. A. I said that—

Q. Now, why does the absence of those policemen make him unable to do that? A. Because he—

Q. You don't know, do you, Doctor?

MR. DANIEL: Let him answer.

THE COURT: Let him finish.

A. Because he was able to appreciate some things that were going on around him and to control his behavior in that context. Other things he was not able to control his behavior with regard to.

Q. We're not talking about other things, we're talking about— A. I think we're talking about a number of behaviors, not just one.

Q. We're talking about at the time of the crime, sir. That's what we're concerned about, at the time of the crime. A. Yes.

[837] * * * Q. Now, you told Mr. Daniel that he had a mental disease or defect and could not conform his conduct to the requirement of law. Because the Court has already stated that you didn't say anything about to appreciate the wrongfulness of his conduct, we can't get to that. So we're going into something that you didn't bring out before and didn't enter into your evaluation. But you have just stated that if policemen were there he could have conformed his conduct to the requirements of law? A. He might have.

Q. You're saying now he might have. Did you not a moment ago tell the jury he would have? A. I don't remember my exact words.

Q. Does that not indicate then that at that point he could conform his conduct according to the requirements of law? A. It means that his conduct was dependent on the circumstances to some extent.

Q. So if he had a chance to do it and get [838] away with it he would do it and if he couldn't he wouldn't. Is that what you're saying—assuming he committed it? A. That's possible.

Q. That's not mental illness, is it? A. That in itself, no.

Redirect Examination

By Mr. Scott Daniel:

Q. Doctor, what is the mental illness? A. Depression.

Q. And that depression combined with the circumstances had what effect? A. That plus the circumstances could have had the effect that he would have engaged in behavior over which he was substantially impaired in terms of conforming his conduct to the right.

Q. Assuming the circumstances were as we understand them to have been, assuming those circumstances were that there were no five policemen there and none of the type of restraining influences the Attorney General asked you about but rather this is out on a lonely road with no one around, how would those circumstances affect a person with the type of illness you found? A. I would think a person would be more likely to do it there.

[839] Q. Now, is that based simply because of appreciation of police being there? What are you talking about? How do you describe that? A. Based on the fact that that sort of action could be done more safely there.

Q. Now, do you think under those circumstances—not the ones where you have five policemen there—that he would have had the ability to conform his conduct to the

law? Not with five policemen there, but under the circumstances described? A. No, sir, I don't think he had that ability.

Q. Will you explain why, why those circumstances make the difference? A. Because he was a gentleman with very strong, mixed feelings about the woman. The feelings were very strong about the man that she was with, although they were not mixed. There was no love for the man. Because this woman meant so much to him and he saw himself losing her; because he lived such a life of loneliness and depression anyway; and because he had so much alcohol in his system. I think if you put all of that together it could have been an explosive situation.

Q. Did the alcohol that you described produce the illness or did the illness produce the alcohol use? [840] A. I think the abuse of alcohol was secondary to the depression.

Q. What do you mean "secondary"? A. I think he was depressed first and abused alcohol second.

Q. Now, with regard to the type of information you elicited from him and the type of information you used in your evaluation, the type of evaluation you conducted with regard to your interview with the accused, Mr. Clark, is this standard, customary, proper psychiatric procedure? A. Yes, sir, it's proper.

Q. Now, did you go further and make attempts beyond the ordinary psychiatric procedures to determine the knowledge or the recollections of the accused? * * * A. Yes, sir, I went beyond the usual in an attempt to elicit as much recollection from Mr. Clark as I could. To do two

of those medication interviews in one day that I did and then to send somebody to hypnosis too, that is quite unusual to go that far.

Q. Now, in your opinion did the medication interviews produce a realistic and truthful response from [841] the patient as to the questions you were giving him, truthful as far as he was able to tell you? A. Yes, sir, it is my opinion that if Mr. Clark killed someone that evening he has no conscious recollection of it.

Q. Do you have the same opinion about the hypnosis interview? A. I spoke with the psychologist who did the hypnosis and he stated that—

GEN. DOTSON: Object.

THE COURT: Yes, I sustain that.

Q. The Attorney General asked you if he went to you and told you he did it would that have put him in the penitentiary. Now, if he had told you that he did it I believe that information could have been used in his behalf, could it not? A. Yes, sir, that was my impression.

Q. And as a matter of fact, if he had indicated to you that he had done it, it would have made it easier, even more simple, for you to give an evaluation or an opinion as to the psychiatric condition, would it not? A. It has been very difficult evaluating Mr. Clark because I don't know if he did it or not; I have no idea if he did it or not. I do know he maintained all along that he did not do it and he did not appear to me to [842] be lying. That has made my job much more difficult.

Q. So it is your opinion that in the answers and responses and the information that he gave to you he was cooperative in telling you the truth? A. Yes, sir.

Q. At any time during any of those evaluations did he ever indicate, in any way, that he knew anything at all about the deaths or being present at the deaths of the two deceased? A. No, sir.

Recross Examination

By General Dotson:

Q. Doctor, did I understand you to say that you were of the impression that if this was done at a lonely place this type murder could be done more safely? A. Yes, sir.

Q. Is that an indication of insanity or smartness? A. That's an indication that the person is able to think about some of the things that are going on.

Q. Yes, sir. You said some of the circumstances that you gleaned from this person, and you didn't tell us about it before, was that he had strong, mixed feelings about this woman and about the man she was going with, did you not? [843] A. Yes, sir.

Q. That the feelings were stronger about the woman because he loved her and felt like he was losing her? A. Yes, sir.

Q. Is that not consistent with the statement that he could have made, "If I catch her with someone I am going to kill her"? Is that one way of keeping someone else from having her to bother him for the rest of his life if he couldn't have her? A. That's possible, yes.

Q. And you stated that this medication produced a realistic response? A. It's my opinion that he was giving a truthful response. The medication didn't produce it.

Q. But you said a realistic and truthful response? A. That's my opinion.

Q. Did you not state earlier when I questioned you that the medication was such that he got to the point where he couldn't tell you exactly all of the places that he was because he was confused? A. Some of the details that he gave were confusing.

Q. As a result of the medication? [844] A. I don't know that.

Q. Well, how do you know this caused him to give a realistic explanation, then? A. My point is that throughout the entire procedure with the medication that he steadfastly maintained that he did not do that, that he did not do the events that are alleged.

Q. Is it not true that a person with or without medication can steadfastly contend that they didn't do something? Could he not do it under the medication just the same as not being under the medication? A. It's very unlikely but it's possible.

Q. It's possible? A. Yes, sir.

Q. And you said this is a difficult case? A. Yes, sir.

Q. So it's possible that he could have done that? A. It's possible.

Q. So the medication, then, if he was doing it and it didn't affect him would not have caused him to tell the truth, would it? A. No, it wouldn't.

Q. It's possible, isn't it? A. It's possible, true.
[845] Q. And he was there for the purpose of you mak-

ing an evaluation beneficial to him? A. To assist his attorney in his defense.

Q. And his defense is insanity; therefore, I'm not guilty; therefore, I'm to be turned free? A. I don't know that that's his defense.

Q. If it is his defense, though, it would be beneficial to him, wouldn't it? A. Yes.

Q. And he would have reason to lie from start to finish to you about his condition, wouldn't he? A. If he did it.

Q. And you have no way of knowing whether he did or did not do it, do you? A. Not with certainty.

Q. And you have no way of knowing with certainty that he was or was not telling you a lie, do you? A. No, sir.

Q. Did Mr. Clark ever deny to you that he killed those people? A. Yes, sir.

Q. How could he have been in a position to have denied it if he didn't know whether he did or didn't do it? But if according to you he had amnesia during that period of time he wouldn't have known whether he did it or [846] not, would he? A. I'm saying that if he did it he doesn't remember doing it.

Q. But he told you he didn't do it? A. Maybe he didn't.

Q. But he told you he didn't? A. That is correct.

Q. Is that consistent or inconsistent with amnesia during that period of time? A. That's consistent with a number of things.

Q. I didn't ask you about a number of things. Is that consistent or inconsistent with amnesia? A. That would be consistent with amnesia.

Q. Remembering that he didn't do it but not admitting that he did? A. You don't remember that you didn't do something, that doesn't make sense.

Q. Has that not been his defense? A. He said he didn't do it.

Q. He didn't say, "I don't know whether I did or I didn't because I don't remember," he said, "I didn't do it." A. Thats right.

Q. Is amnesia a total lack of memory and therefore if he had had amnesia he wouldn't have known [847] whether he did it or did not do it? A. Amnesia is a lack of conscious awareness.

TESTIMONY OF DR. ROGER WHITE

Direct Examination

By Mr. Scott Daniel:

[856] * * * Q. Now, Doctor, at my request or in conjunction with my request for an evaluation of Dr. Griffin, did you have occasion to examine Stanley Clark? A. I saw Stanley Clark in consultation at the request of Dr. Griffin on two occasions after having reviewed the record at his request for some special evaluation periods that he felt I had more experience with them than he did.

Q. Now, what were those particular areas? A. The two particular evaluation sessions that I had any direct contact with him involved Barbiturate [857] interviews—well, actually the substance used was a drug called Brevital or Methylhexatol, which is an ultra-short-acting Barbiturate similar to Pentothal that's used for an anesthetic. This procedure is most often used in conjunction with court cases now and it at one time was used with emotional trauma in wartime with people on active duty personnel or in combat situations to try to help an individual recall something that they had experienced which because of whatever reason—in many cases emotional pain—they were unable to recall events which had brought about—okay, changes in their function or which led them to be unable to remember things which they needed to be able to remember for whatever reason.

[858] * * * Q. And in what hospital did you see Mr. Clark? A. The Parthenon Pavilion, which is the psychiatric section of Parkview Hospital.

Q. And I believe you also had occasion to study the records of his tests and so forth that were given to him there, did you not? A. Yes, sir.

Q. And I believe those included various physical and brain scan type things? A. And they particularly included psychological testing which Dr. Griffin had requested.

Q. And the psychologicals were performed by Dr. Michael Campbell? A. That is correct, sir.

Q. And I believe you had access to all of these evaluations? [859] A. Yes, sir.

Q. Now, Doctor, as a result of your examination and investigation were you able to formulate an opinion as to whether or not Stanley Clark on December 30, 1978, between the hours of eight and ten o'clock in the evening was suffering from a mental illness? A. I reached a conclusion; I have an opinion on it.

Q. What is that? A. That he was suffering from a mental illness or a psychiatric illness I should say at that time.

Q. And what is that illness? A. It is a serious and rather longstanding depressive neurosis.

Q. Are you familiar with the acts charged in the indictment that are alleged to have been committed by Mr. Clark? A. Yes, sir.

Q. All right, now, assuming hypothetically that he did commit those acts, do you have an opinion as to whether the mental illness that you described was such as to render him substantially incapable of conforming his conduct to the requirement of law that he is charged with violating? A. I have an opinion.

[860] Q. What is that opinion? A. That he was not able to conform his behavior to the requirements of the law at that time, if he did in fact perform those things he's charged with doing.

Q. Assuming again hypothetically that he committed the acts alleged, do you have an opinion as to whether or not he has any conscious recollections of those acts? A. I have an opinion.

Q. What is that opinion? A. My opinion, based on my two rather intense attempts to help him recall any memory of such acts, is that not only does he not have conscious recollection but that he does not have any reachable recollection of any such acts that I was able to elicit with going to unusual means to try to elicit such memory.

Q. And those unusual means were what? A. Those included Brevital interviews on two separate occasions, the second occasion with Brevital being augmented with a rather powerful stimulant to try to put a great deal more pressure of speech to try to avoid assuming that this person had no recollection of certain events that he might be able to cover even with the level of anesthesia or sedation we were eliciting with Brevital. By adding a stimulant to it many times you can uncover memories [861] that a person either consciously or unconsciously does not want to remember. I was not able to elicit any additional information that had not been elicited from this man without any medication at all.

Q. Doctor, do you have an opinion as to whether or not the accused, Stanley Clark, could have faked or falsified his responses to the questions? A. I have dealt with a lot of people who have been in a lot of serious trouble over the years we have talked about. I have had a lot of people

who have wanted to be, if you please, mentally ill to avoid responsibility for acts. I have dealt with people who have worked very hard at building a rather elaborate system of falsehoods to tell me and their attorneys any anybody else involved. And I won't say I absolutely cannot be fooled, but I would be hard to fool. I don't think it is possible for this man to have lied that effectively, and particularly when you consider the fact that with some drugs like Sodium Amytal, which is a similar Barbiturate, if you put a person to sleep with that it's going to take a little while for them to wake up. Brevital is an ultra-short-acting Barbiturate. I can put them to sleep with that and if I get a little too much where they get too sleepy to talk then you wait two minutes and the level of sedation wears off and they are back to talking with slurred speech. [862] A good part of the time that we were interviewing this man and trying to get recollection of things he is charged with doing I was not approaching this at all in a supportive fashion, I was approaching it more from a standpoint of I don't believe you when you say you don't remember things. We were pushing very hard and were running where his speech was very slurred and he was very sedated and I could get nothing with all of this pressure on the man, with Barbiturate and with the stimulant and with a lot of pressure from me, that he hadn't said to Dr. Griffin before that. Dr. Griffin was present for both of these interviews too.

Q. Is it your opinion, then, that Mr. Clark was being truthful in his responses to your questions as far as he was consciously able to? A. It is my opinion that the chances that he was not being honest were about one in ten thousand.

Cross Examination

By General Dotson:

Q. What was your last statement, Doctor? A. I said that I felt that the odds that he was not being honest in his answers to questions under the circumstances that I talked with him were about one in ten thousand.

[863] Q. Meaning that your evaluation is a gamble? A. All evaluations are a gamble. There are two things that are rarely true with human beings; one is never and the other is always.

Q. Are you saying that you can be wrong in your diagnosis? A. I can be.

Q. Have you ever been before? A. Indeed.

Q. How did you determine that you were? A. How did I determine I was?

Q. Yes, sir. A. By other happenings that occurred later, I suppose.

Q. Or happenings that you learned of that happened before your diagnosis possibly? A. Do you mean in all kinds of diagnoses in medicine?

Q. Yes, sir. A. Perhaps in some cases.

Q. You have attested to Dr. Griffin's credentials, did you not? A. Yes, sir.

Q. He is Board certified? A. Yes.

[864] Q. Are you Board certified? A. No.

Q. Have you taken them? A. No.

Q. If he is eminently qualified can you explain why he needed assistance in this case? A. We frequently will

ask for consultation from another psychiatrist, someone else within our field, in any kind of a complex case. But, as I explained earlier, he felt that I had had more experience with Barbiturate interviews and had had more experience with court evaluations than he had.

Q. What he was doing in that area was actually outside his normal practice, wasn't it? A. He has had a fair amount of experience with it. I have had an unusual amount of experience with it simply because of the things I have done over the years.

Q. Apparently he wasn't satisfied with his own ability in that area, though, was he? A. In this case he wanted an additional opinion.

Q. Therefore he wasn't satisfied with his own evluation? A. That is one way of looking at it.

Q. Meaning that he wasn't sure of the [865] evaluation that he was making? A. I don't think it was exactly that.

Q. Well, how was it? A. I think he wanted another opinion to see what opinion another person might reach.

Q. Did you and the doctor reach the same opinion? A. Essentially, yes.

Q. And you were the one that gave him this medication that he took? A. Yes, sir.

Q. Did that medication ever get him confused and disoriented where he could or could not be realistic? A. During the times when he was most sedated when he was approaching what we would call surgical levels of anesthesia he would get slurred and very sedated where we couldn't understand him.

Q. Was it that you just couldn't understand him or that he was unrealistic in what he was saying? A. I don't think unrealistic that I can recall, sir.

Q. Could Dr. Griffin have reached that decision? A. I don't know.

Q. If he did and you didn't would you say [866] that you had a difference of opinion as to that? A. It would appear that that would be true. We don't always agree on everything.

Q. What number of times would you say psychiatrists in general would agree if they were faced with the same set of circumstances as to their ultimate diagnosis? A. Okay, now you are talking about psychiatric diagnoses in general or psychiatric diagnoses in relation to court proceedings?

Q. Is there a difference? A. Yes, sir, there is.

Q. Your efficiency is better in one area than in the other? A. No, but the things that are going on in one area are different from another.

Q. Speaking with relation to cases in court? A. Okay, diagnostically we would probably agree better than eighty percent of the time. Now, when you start adding to that the fact that in court we are dealing with some rules that you all establish—you all meaning the legal profession—and are not psychiatric determinations, and then the amount of differing opinion probably goes up. Partly it can be related to—okay, attorneys or a given court's interpretation of whatever rule applies in regard to responsibility and partly it can apply to the psychiatrist's [867] interpretation, if you please, of the words of a particular rule which apply in the court.

Q. What have you said, Doctor? A. What I have said is—

Q. Just what have you said so this jury can understand it? A. Okay, have they been—

Q. They have just been listening to you— A. Okay.

Q. —so you tell them just what you got through saying? A. Okay, court's have rules that they say a person is not guilty by reason of insanity if such and such things happen. This is determined in at least all of the jurisdictions I am aware of by a judicial edict. Right?

Q. No, sir, not if such and such things happen. A. Or if such and such things are true?

Q. If a certain condition exists? A. Okay, right. Now, the rule which applies in Tennessee is known in court circles or is referred to as the Graham rule or the Graham decision, which was handed down by the Tennessee State Supreme Court about—what, two and a half years ago?

Q. Good enough. [868] A. And it says that a person is not responsible if—okay, the exact wording I won't claim to give, but that a person is not responsible if as a result of a mental disease or defect a person at the time of an alleged offense either lacked substantial capacity to understand that what he was doing was wrong—and I know that's not exact words—or that he lacked substantial capacity to conform his behavior to what the law required. Close?

Q. Doctor, you're coming in here and telling this jury what this person's condition is based upon that you're not telling us that you need to be refreshed as to what

the test is, are you? A. No, but I'm wanting to know if—okay, that's the test as I understand it and I'm asking is that close enough to suit you. I know it's not exact words.

Q. Don't you think that an expert psychiatrist should know what it is? A. The exact words?

Q. Yes, sir. A. That's close.

Q. Do you think you should know, though, what it is? A. That is the test.

Q. Do you think you should know what the test is? [869] A. That I should memorize the exact words?

Q. Yes, sir. A. Not necessarily, no.

Q. Now, the question is in what percentage of the cases would you and a doctor disagree—you have explained it to them a second time and I don't believe they understood it that time.

MR. DANIEL: If your Honor please, I don't like his comments for what the jury understood.

THE COURT: Yes.

Q. All right, without stating whether they did, how many times would you and a doctor disagree on a criminal evaluation for court appearances? A. (Respite) Maybe one out of ten. It depends on who the other doctor was.

Q. Nothing like fifty or sixty percent of the time? You would both agree sixty percent of the time? A. Yes, I would feel we would.

Q. But not ninety percent, would you? A. I think I said ninety percent.

Q. Would you agree that much? A. I think so.

Q. Do you know Dr. Sam Pieper? A. Yes.

Q. How do you feel like he is qualified? [870] A. He is well qualified.

Q. Doctor, would your opinion be the same in this case if you had received information from the Defendant's family as to what his past habits, traits, and conditions were? Could that have affected your decision? A. I knew some of those.

Q. Did you receive any of those that were favorable toward the Defendant being sane or were they all toward his insanity? A. I received both.

Q. Did you receive them from his family? A. Directly, no, sir.

Q. Would it have helped you to have known past threats that this Defendant made toward the victim? A. In this particular case and considering the special nature of my contact with him, probably not. My opinion is based largely on my contact with him and his response to a special form of examination.

Q. Would it have affected your opinion if you had found that this man had borrowed a gun to carry out the homicide? A. It would bother me if I knew he had borrowed a gun to kill someone with, yes.

Q. And that wasn't in it? If you had found that out would that have affected your decision possibly? [871] A. If I had found out this man had borrowed a gun to kill someone with, yes, certainly it would have affected the decision.

Q. Would it have affected your decision to have found out after the death of the victims the gun was disposed of? A. I was aware of the fact that the gun was found sometime later.

Q. Were you aware it was found on the last path the Defendant took just immediately before he was apprehended? A. Yes, sir.

Q. Did that enter into your decision? A. I considered it.

Q. Was disposing of the weapon which has turned out to be the murder weapon in this case indicative of insanity? A. It is not indicative of insanity; it's not exclusive of insanity either. Of course for that matter, I don't know that he's the one that did it.

Q. Would the fact that he attempted to run from the police officers upon being confronted by them have entered into your decision? A. Not in this particular case, considering the special nature of my evaluation here.

[872] Q. Doctor, isn't it possibly true that standing between Stanley Clark and going to the penitentiary was telling the truth or refusing to tell the truth? A. I'm sorry, I didn't understand that question.

Q. Did you understand that Stanley Clark would run the risk of going to the penitentiary for some great period of time if he admitted to you he was responsible for these homicides? A. I would understand that—

Q. All right, do you think—

MR. DANIEL: Let him finish his answer, please.

A. I would understand that he understood that. There is no point in his covering memories with me be-

cause had he had memories which would not have served him I would not have been able to testify for you because of the nature of the fact that I was seeing him as a private psychiatrist. And he was aware it could not be used against him.

Q. Who told him that? A. I did before the interview, and Dr. Griffin had before the interview.

Q. Was he aware of the reason he was to see you? [873] A. Yes.

Q. Is that awareness an indication of insanity? A. I don't recall having said I felt he was insane at the time I saw him.

Q. Is he insane at this time? A. As defined by the court rule, no, sir.

Q. Was he insane six months before this? A. January—I would doubt that his period of insanity as defined by the rule we talked about lasted more than a few hours.

Q. Doctor, would it come as a surprise to you to tell you that you have now just disagreed with Dr. Griffin in your evaluation of this person? A. I would be willing to listen to you as to how it did.

Q. All right, is it consistent with what you have said that Dr. Griffin said the condition that existed in Stanley Clark at the time of the homicide had been existing for some period of time and still exists and now you can say that condition of mental illness does not exist? A. That wasn't what you asked me. You asked me if he was insane.

Q. Is he mentally ill? A. Yes.

[874] Q. Has he always been? A. He has been for a long time.

Q. Is he still mentally ill? A. Yes.

Q. Does he know right from wrong? A. Yes.

Q. Back to the night that this crime took place, did he know right from wrong? A. It is my opinion he did not if he were involved in this, as I was asked in a hypothetical earlier.

Q. Would you be surprised if I told you that Dr. Griffin thought that he did know right from wrong the night this happened? Is that consistent with the evaluation that you made and he made that you say he did not know right from wrong? A. I'm sorry, I misunderstood the question. I would agree with that.

Q. That he did know right from wrong? A. At that time, yes.

Q. Now, then assuming right before this took place there were five policemen there and he knew right from wrong would he have committed this offense? A. If we're assuming—okay—

Q. We're assuming five policemen were there. A. Yes, I think so.

[875] Q. You think so? A. (Witness nods in the affirmative.)

Q. Do you understand my question? A. Yes, sir.

Q. Let me be sure, now. You say that he knows right from wrong? A. Yes.

Q. And now we assume that at the time of the offense there were five people there, five policemen. You are saying based on your study and practice he would have committed the same offense? A. I would say he might have

because this was a control defect in my opinion, not a knowledge or cognition defect.

Q. Now, have you understood that question the two times that I have asked you? A. I think so.

Q. Is there anything about it that you don't understand? A. I don't understand why you're asking it.

Q. Okay, I'm going to ask you: Would it come as a surprise to you to find out that based on the evaluation you made and Dr. Griffin made that you came up with the same result and Dr. Griffin's opinion is he would not have done it? [876] A. Well, I guess we have differing opinions on that.

Q. Which means that out of two doctors we have talked to today one says one thing and one says another and we haven't reached ten doctors yet. Does that mean that you're right fifty percent of the time and he's right fifty percent of the time? A. I don't think we're in basic disagreement, sir.

Q. You realize that it's for the jury to decide, don't you? A. Yes, sir.

Q. So he knew right from wrong and you said he would have gone ahead and committed the crime? A. He might have.

Q. Although Dr. Griffin, the lead psychiatrist in this case, said he would not have? A. I won't change my opinion because of any disagreement, no.

Q. Does that indicate that you and the doctor could be wrong, that you could disagree on some other points? A. I think we could disagree on some other points and still be in basic agreement, sir.

Q. Did this Defendant tell you where he had [877] been that day? A. He described during the sessions where he had been.

Q. Where did he say he went after leaving Shelbyville? A. I don't recall all of the various places or the exact path that he took.

Q. Was he very clear and precise on them? A. Yes.

Q. Do you know why Dr. Griffin said he was not? A. Well, I'm a little better acquainted with that end of Bedford County than he was.

Q. We're not talking about where he actually said he went. The doctor said there was a point where he was confused as a result of the medication. Now you're telling us that he remembered specifically where he went? A. In my opinion he remembered the places. While I can't sit here and give you a precise he went here and then here and then here—

Q. Does this— A. Let me finish, please. —from knowing some of the roads and some of the area, where he was saying he was going from one place to another was some place you could go and that would be the next place you would come to, [878] like from Shelbyville to Wartrace to Bell Buckle. That wouldn't have made very good sense to Dr. Griffin because he is not acquainted with that area at all.

Q. Well, you have stated that he had no trouble telling you where he went. Dr. Griffin stated that some of the places he wasn't clear about, the medication had him confused. I'm asking you now if you and Dr. Griffin disagree

on how well he remembered where he went? A. Apparently we do.

Q. Is that another point where you and the doctor disagree? A. That has nothing to do with the ultimate opinion.

Q. Does the matter of whether this man told you the truth or told you a lie have anything to do with the ultimate decision? A. It has something to do with the jury's ultimate decision.

Q. I'm talking about yours, your decision as to your opinion? A. My opinion is based on observing this man, listening to him, and my experience. And I have given you that. You know, can I absolutely guarantee you that I am a hundred percent right a hundred percent of the time, no, I've said earlier.

[879] Q. Doctor, had this man been lying to you from start to finish, even though it's your opinion he was not, would your opinion be wrong? A. If he had been lying to me from start to finish even though it is my opinion he was not and could not under the circumstances, then my opinion would be wrong, yes, sir.

Q. So therefore this jury is to take your opinion which is based on your experience but that experience only helped you in evaluating this Defendant and your evaluation is based upon what he told you? A. And on my experience and my observing him and listening to tone of voice.

Q. Point out on this Defendant what it is that this jury can see about him that indicates he has a mental illness? A. Right now?

Q. Yes, sir. A. Nothing.

Q. Is there anything that they can see, hear, touch, or smell about this Defendant indicating mental illness? A. As he sits there right now, no, sir.

Q. Did he have organic brain damage? A. He may have.

[880] Q. Would that have affected your decision? A. In this case, no.

Q. Did he or did he not? A. Have organic brain damage?

Q. Yes. A. That's plus or minus in my book. I can't—I don't know. He doesn't have serious organic brain damage like someone who has had a stroke or had half their brain knocked out might have. He may have some. Is this enough in itself to—

Q. —affect your decision? A. No.

Q. Does he have organic brain damage? A. I answered that already.

Q. What was your answer? A. It was he may have some.

Q. Is this again where you and Dr. Griffin disagree if he said he didn't have any?

MR. DANIEL: If your Honor please, he didn't say that at all.

THE COURT: I sustain the objection. It's up to the jury to determine what the proof was.

Q. Doctor, you don't know how much you and Dr. Griffin really agree on this except the bottom line, that he

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was mentally ill and that mental illness is—what? [881] How do you define it? A. What, the depressive neurosis?

Q. Yes. A. It's defined as a psychiatric disorder which is a mood disorder. It has to do from an unconscious basis with difficulty in handling anger, frustration, a difficulty in externalizing feelings which a person tends to turn in against themselves under most circumstances.

Q. In your interview with him and Dr. Griffin's interview with him did I understand you to say that he has got amnesia? A. General, if he did what he is charged with doing—which I have no way or knowing one way or the other—then he has amnesia for it.

Q. Can amnesia be faked? A. It can, but not very often and not very effectively.

Q. Did this Defendant ever deny committing the crime? A. Yes, sir.

Q. Is that an indication of amnesia? A. Not necessarily. You know, if he didn't do it, it would just be a statement of fact. And I don't have any way of knowing which might be the case.

Q. You don't know whether he did or didn't, [882] do you? A. No, sir, I don't.

Q. Other than on your experience you have no way of knowing whether he told you the truth or not, do you? A. That is correct.

Q. What is called prison psychosis? A. That is Ganser syndrome. Ganser syndrome is a hysterical malfunction which a person under a great deal of stress, if you

please, acts too crazy to be crazy. You may ask a question, you get answers but they are totally wrong but they have some bearing to what the answers should have been. These are wildly disorganized appearing people who become very organized again as soon as the heat is off them so to speak.

Q. Everything you observed about this Defendant was ordinary except what he told you? A. Everything was ordinary, yes, except—

Q. And you have no way of looking into his brain and telling whether he was telling the truth or not; yes or no? A. No.

Redirect Examination

By Mr. Scott Daniel:

[883] Q. Doctor, do you have ways of trying to get at the truth? A. I always try to get at the truth.

Q. Is that one of the functions of a psychiatrist? A. In relation to pre-trial evaluations, regardless of who requests it, that is a function of a forensic psychiatrist or a psychiatrist who is going to evaluate people who are involved in court actions be they civil or criminal.

Q. And as part of that function is it your duty and responsibility to determine whether he is lying or telling the truth? A. It is my responsibility to reach an opinion and communicate that opinion to whoever is asking for it, be it the court or be it an attorney or whoever.

Q. And as part of your experience and practice and your evaluation of this man I believe you said you formed an opinion? A. I formed an opinion based on my observation and my experience.

Q. And that opinion was what? A. That opinion was that this man has and [884] does suffer from a psychiatric illness or mental illness if you please, a form of depression which can influence and affect a person. And on the date in question which he is charged with committing certain acts, that if he did them, in view of the fact that I was unable to elicit any memory of contact, conflict, or the like, it was my opinion that he was sick enough at that time in assuming that he did do these things that he has buried all knowledge, memories, recollection of this deeper than anyone I have ever examined in the—what, twenty-one years or so I have been dealing with people in trouble.

Q. Now, Doctor, do psychiatrists normally make their determinations based on what they can smell— A. No, sir.

Q. —or touch? A. Not generally.

Q. Is the method of evaluation that is used by you and Dr. Griffin, talking to the patient and evaluating his responses and observing the way he talks to you as opposed to the way he sits and responds to your questions, is that proper and customary psychiatric techinque [sic]? A. Yes, sir.

Q. Doctor, did you make your evaluation and your opinion and present your testimony here the same way that you have when you have testified on behalf of the [885] prosecution against the Defendant? A. Yes, sir.

Q. And you have done that on few or many occasions in the past? A. A few hundred I suspect by this time.

Recross Examination

By General Dotson:

Q. Are you telling this jury that you have testified in these kind of cases a few hundred times? A. Not murder trials but in Criminal Court.

Q. How many would you consider to be a few? A. Two or three hundred.

Q. Three hundred cases? A. Probably.

Q. Over a period of twenty years? A. Twenty-one now, I'm sorry to say.

Q. So that would be how many cases a year? fifteen? A. Yes, sir, if you realize that one year was heavily loaded and during that time I was doing almost exclusively that.

Q. Were you wrong in any of those cases? A. It depends on how you define wrong. Was I on the losing side? On some of the cases, yes, sir. The [886] jury didn't always agree with me.

Q. Did this Defendant tell you that he attempted to elude the police that night? A. I don't recall asking him.

MR. DANIEL: If your Honor please, he's not going into cross-examination; he's going outside the scope.

THE COURT: Yes, I allowed you some latitude but I'm going to be harder on the General. General, let's confine it to his redirect.

Q. You said this was a highly unusual case? A. I don't know that it's a highly unusual case—

Q. That you've never seen—

MR. DANIEL: Let him finish his answer, please.

GEN. DOTSON: He answered; he said he didn't know.

MR. DANIEL: He was still talking when you cut him off.

GEN. DOTSON: It wasn't responsive.

THE COURT: Doctor, do you want to say anything further about that question?

THE WITNESS: As criminal cases go that I have been asked to see, no, I wouldn't say it is a highly [887] unusual case. It is unusual in the findings.

Q. And it is possible that this Defendant had the faculties and the abilities to withhold everything he withheld from you? Yes or no? A. In my opinion, no.

Q. That is your opinion, but medically would it have been possible? A. General, my opinion is that it is not medically possible for him to have withheld the material that I was looking for and which I have said I was unable to get. If I did not feel it was medically impossible I'm sure Mr. Daniel wouldn't have asked me to have appeared today. But that's my opinion. Can I prove it chiseled in stone somewhere? No, I can't, sir.

Q. That's what I'm asking; so we have no way of knowing, do we? A. No, sir.

REBUTTAL TESTIMONY OF TERRY HILL

Direct Examination

By General Dotson:

[901] * * * Q. Mr. Hill, you have previously testified and you are still under oath. How long did you testify you have known Stanley Clark? A. About twenty-five years.

[902] * * * Q. Have you known him long enough to have an opinion as to whether Stanley Clark knows right from wrong? A. Yes, sir.

Q. What is that opinion? A. That he knows right from wrong.

Q. Have you known him long enough to know whether he is able to control his emotions and faculties such that he would or would not violate the law? A. Yes, sir.

[903] * * * Q. Do you feel like you know him well enough to say whether he has been able to control himself to keep from violating the law or not? A. Yes, sir.

Q. And what would that be? A. Yes, sir, I believe so.

Q. You believe so what? A. I mean, I felt that he was all right or I wouldn't have loaned him the gun.

Q. If you ever thought he had a mental problem you would not have loaned him that gun? A. No, sir.

Cross Examination

By Mr. Scott Daniel:

[904] * * * Q. Isn't it a fact that you really don't know what his mental state or what his thinking or thoughts are anything more than just superficially when you happen to meet him? A. That's about it, I guess.

Q. And you don't know whether he was mentally upset or in a depressed state just from the short occasions when you would pass the time of day; isn't that true? A. Yes, sir.

Q. And that is about the sum and substance of what you know about Stanley and his condition during these past four or five years; is that correct? A. Yes, sir.

Q. I believe you have noted though that he has had a rather substantial loss of weight, has he not? A. I really hadn't noticed. I know he has since the first of the year but other than that—

[905] Q. You don't remember when he was losing weight? A. No, sir.

Q. But you do know that he has lost a lot of weight? A. Yes, sir, like I say, the last few months I know he has.

Q. And you know also I believe that—you're not saying that he didn't lose weight before then? A. No, sir, I didn't say—

Q. You didn't pay any attention to him? A. No, sir.

Q. And the fact is you weren't close enough or seeing him enough to pay attention to much of anything about him up until after this happened, were you? A. Yes, sir.

Redirect Examination

By General Dotson:

Q. Did you say you noticed the weight loss since the first of the year? A. Yes, sir, since this has come up.

Q. Mr. Daniel asked you the association you had with him, has not Mr. Clark visited in your home? A. Yes, sir, I have seen him.

Q. In your home? [906] A. Yes.

Q. You have drank beer with him? A. Yes.

Q. You have been out with him? A. Well, not that much, I mean, we've seen each other—

Q. But you have some? A. Yes, sir.

Q. And you have been in his house? A. Yeah.

Q. On more than one occasion? A. Yes, sir.

Q. As a matter of fact you saw him for a period of two hours this month? A. Yes, sir.

Q. Did you notice anything different about him during any of these times? A. No, sir.

Q. Is he the same Stanley Clark that you have known since childhood? A. Yes, sir.

Recross Examination

By Mr. Scott Daniel:

Q. Mr. Hill, on these occasions when you have seen him, these were just short occasions and not in-depth [907] discussions of his problems or his feeling or his thinking or his emotions, were they? A. No, sir.

Q. Just very informal and very light conversation-type things; is that correct? A. Yes.

Q. And you couldn't say whether or not Stanley has been disturbed or whether he was depressed; you don't

know anything about that, do you? A. No, sir, I knew nothing about it.

Q. And you know nothing about what his condition has been and you didn't pay attention to him and until all of this came up you didn't have any occasion to go out with him or do anything at all, did you? A. No, sir.

Q. I believe your association on the few occasions that you have seen and talked with him have just been under circumstances where there was no opportunity or no occasion for any talking about any feelings or problems or in-depth type thing, hasn't it? A. Yes, sir.

Further Redirect Examination

By General Dotson:

[908] Q. If he had these problems he made no outward manifestation of them and discussed them with you, did he? A. No, sir.

REBUTTAL TESTIMONY OF LOYALL PITTMAN

Direct Examination

By General Dotson:

[909] * * * Q. Mr. Pittman, how long have you known the Defendant, Stanley Clark? A. I have—I suppose being acquainted with [910] him and seeing him in the community about six years or thereabout. It may have been a little longer.

[911] * * * Q. Do you think you got to know him well enough that you could say whether he knew right from wrong? A. I believe so.

Q. What would you say as to whether he did or didn't? A. I think he knows right from wrong.

Q. Have you ever seen him at a time when he was unable to control himself? A. No, sir.

Q. During the six years that you knew him and the last three years that you got to know him better, did you see any major changes to indicate that he was any different in the last part of '78 and the first part of '79? A. Not that was noticeable.

[912] Q. You didn't notice anything different? A. No, sir.

Q. Do you feel like he was of sound mind? A. I believe so, in my opinion.

REBUTTAL TESTIMONY OF STANLEY BROWNING

Direct Examination

By General Dotson:

[913] * * * Q. Do you know the Defendant in this case, Stanley "Clicker" Clark? A. Yeah.

Q. How long have you known him? A. I have known him several years; I couldn't say right off how many.

Q. One? two? three? four? A. I guess twelve or fifteen years.

* * *

[916] * * * Q. Do you have an opinion as to whether during the time you have known him that he knew right from wrong? A. Yes, I would say he knows right from wrong.

Q. Have you know him to be able to control his faculties and thinking and such that he doesn't violate the law since you have known him? A. Yes, he can control it.

Q. Do you see anything that would lead you to believe that he was mentally ill or insane? A. I have never seen nothing that would.

Cross Examination

By Mr. Scott Daniel:

[917] * * * Q. When was the last time that you talked with Stanley any more than just to wave or say hi? A. Well, I don't really know what day it was. Like I say, I didn't keep up with it or nothing.

Q. January? February? March? April? May? June? July? A. Well, if you can find out when he bought that new truck, he come over there right after he bought that new truck.

Q. That would have been way back in 1978, wouldn't it? A. Yeah.

Q. And that's the last time you saw him and talked to him? A. As far as I know, yes.

REBUTTAL TESTIMONY OF EDDIE PEEL

Direct Examination

By General Dotson:

[918] * * * Q. Have you gotten to know the Defendant, Stanley Clark, in any way? A. Yes, sir, I have known him for twelve or fifteen years.

Q. Have you ever had occasion to talk with him? A Some, yes, sir.

Q. Based upon what conversation you have had with him do you feel like this Defendant knows right from wrong? A. Yes, sir.

Q. Do you feel like he has been able to conduct himself so as not to violate the law and get along in the community okay? A. Yes, sir.

Cross Examination

By Mr. Scott Daniel:

[919] Q. Mr. Peel, when was the last time you talked with Stanley? A. I couldn't tell you.

Q. About when? A. Around a week before Christmas of 1978.

Q. And when was the last time before that? A. I couldn't even say.

Q. So it hasn't been very often, has it? A. No, sir, not a whole lot.

Q. And when you did talk it was just very short, not in-depth conversation, wasn't it? A. Yes, sir.

Q. So you really don't know what his mental state or what he was thinking about inside was, do you? A. I wouldn't have any way to know what he was thinking, no sir.

Redirect Examination

By General Dotson:

Q. He had no occasion to express it to you if it was anything bad, did he? A. No, sir.

Recross Examination

By Mr. Scott Daniel:

[920] Q. He wouldn't have any reason to express it to you, would he? A. Not that I know of.

REBUTTAL TESTIMONY OF LINDY WOODSON

Direct Examination

By General Dotson:

[921] * * * Q. Do you know the Defendant, Stanley Clark, as a result of living in that community? A. Yes, sir.

Q. And you have known him for how long? A. Twenty five or more.

[922] * * * Q. Do you feel like you have gotten to know him fairly well? A. Yes, sir.

Q. During this twenty-five year period of time have you seen any major change in the way he conducted himself? A. No, sir.

Q. Has he always been the same Stanley Clark? A. Yes, Sir.

Q. Do you feel like he knows the difference between right and wrong? A. I believe so.

Q. Do you feel like he knows how to conduct himself according to the law? A. Yes, sir.

Q. Did you see him before December of '78? A. Yes, sir.

Q. How often would he come in your store? A. Oh, every day or two.

Q. Have you seen him any since December of '78? A. Yes, sir.

[923] Q. Where? A. Well, at the store or out at my daddy-in-law's; around in Fosterville.

Q. Have you noticed any change in him since December of '78 different from what it was a year and five years before? A. No, sir.

Q. Do you feel like he knows right from wrong— A. Yes, sir.

Q. —and he can conduct himself according to the laws of the county— A. Yes.

Q. —and the state? A. Yes.

Cross Examination

By Mr. Scott Daniel:

[924] * * * Q. And he just comes in there to get groceries — A. (Witness nods in the affirmative.)

Q. —And he doesn't sit down and tell you how he thinks or about his love life or his family or anything else? It's just a business transaction, isn't it? A. Mostly, that's right.

Redirect Examination

By General Dotson:

Q. He never told you that he was having any problem with all of that, though, did he? A. No.

Recross Examination

By Mr. Scott Daniel:

[925] Q. He wouldn't have any reason to tell you, would he? A. I don't know of any.

REBUTTAL TESTIMONY OF DR. SAMUEL PIEPER

Direct Examination

By General Dotson:

[930] * * * Q. Doctor, just recently did you have occasion to make an evaluation of Stanley Clark? A. Yes, sir.

Q. Is that the person present in the courtroom today? A. Yes, sir.

[931] Q. Where is he seated? A. He's the gentleman on my left side at this table here.

Q. Prior to getting into that, let me ask you, Doctor: As an expert in this field, if two psychiatrists have the same set of facts what percentage of the time do you feel that they will come up with the same evaluation? A. It depends on the setting in which you gain these facts. If you take a group of psychiatrists and set them down in front of a television set where they are watching a patient being interviewed by somebody else, the best you can hope for is somewhere between eighty percent and sometimes it might get as high as ninety percent, but usually around eighty percent is about the best agreement you are going to get.

Q. Is that a standard, closed interview? A. Yes, sir.

Q. And what if a person went into your office and the next office and the next office and these psychiatrists interviewed him individually, not in a standard, closed setting? What would you say that percentage would be? A. It would be more like fifty to sixty percent agreement.

Q. What you are saying is that two [932] psychiatrists can see the same thing and come up with completely

different opinions? A. Yes, sir, because the diagnosis—psychiatry reflects not only the facts that you see but it also reflects your theory about the cause of the disorder and it also reflects your ideas about the treatment of the disorder.

Q. Although you rely upon your past experience and other psychiatrists do too, most of your information for your diagnosis is based upon what the Defendant tells you himself, isn't it? A. Yes, sir.

Q. And if he is telling you a lie you could come up with wrong diagnosis, couldn't you? A. Yes, sir.

Q. Now, assuming that he told you the truth and told another psychiatrist the truth and the facts were identical, it would be possible for you to come up with one conclusion and the other psychiatrist to come up with a completely opposite conclusion? A. Yes, sir.

Q. Psychiatry is no more exact than that, is it? A. That's true, yes, sir.

Q. And you don't like to have to say that [933] about your profession, do you? A. No, sir, because I feel like from one patient to another patient I'm very consistent and, you know, and I am satisfied that what I do is right and it fits for me. But across the profession there is considerable difference.

Q. Back to my question: Did you do an evaluation of Stanley Clark? A. Yes, sir.

Q. What was the nature of that evaluation? A. Somewhere about the end of June or the early first part of July I received a call from you asking me if it were

possible for a psychiatric evaluation to be done on him and I replied that I would be happy to do it if this is what the fellow that I was working for at the forensic service division wanted me to do. And you arranged through the Court for this evaluation to be ordered.

Q. Tell us the nature of the evaluation. A. This evaluation consisted of having Mr. Clark come to the Forensic Service Division. Two of your investigators had come in and given us the facts concerning this issue. Then we talked with Mr. Clark for approximately an hour and a half. The next day he came back and had skull X-rays and an EEG and a psychological testing and I talked with [934] him for perhaps ten or fifteen minutes at that time.

Q. Did you make a determination at that time as to whether the Defendant, Mr. Clark, was suffering from or had sustained any organic brain damage? A. Our testing did not reveal any evidence of organic brain disease.

Q. As a result of that evaluation did you form an opinion as to whether Defendant Clark currently is mentally ill? A. Here I would like to explain to you the difference between mental illness—if you mean was he suffering from a diagnosis in the statistical manual of psychiatric diagnoses, yes, sir, I would have to say yes.

Q. You would have to say yes to what? A. That he was suffering from a disorder within the manual, listed in that manual.

Q. At the time you examined him was he competent to stand trial? A. Yes, sir.

Q. As a result of that evaluation did you form an opinion as to whether he lacked a substantial capacity to

appreciate the wrongfulness of his conduct or to conform his conduct to the requirement of law? A. Yes, sir, I formed such an opinion.

Q. What was that opinion, sir? [935] A. That he did not lack that capacity.

Q. And what about being able to conform his conduct to the requirement of law? A. He was able to conform his conduct.

Q. As it relates to the night or December 30th, 1978— A. Yes, sir.

Q. —or on any other day? A. Yes, sir.

Q. Doctor, without stating what he told you, now, during your evaluation did you find out that there was any period of time during December 30, 1978, that there was a period of time that the Defendant did not remember anything? A. No, sir, he was very clear that he recalled starting early in the morning and carried it right through the entire night up until the next morning.

Q. Was the Defendant made aware of the fact that Dr. Griffin said he had had amnesia for a time during December 30th, 1978? A. Yes, sir.

Q. And what was his response to that? A. He disagreed because he said he knew where he was and what he had been doing.

• • •

[937] Q. Doctor, can amnesia be faked? A. Yes, sir.

Q. Doctor, if the psychiatrist's evaluation is based solely and alone on what the Defendant tells the psychiatrist—do you follow my question? A. Yes.

Q. If the evaluation is based solely and alone on what the Defendant tells the psychiatrist, is there any positive way you can tell whether the Defendant—

MR. DANIEL: Your Honor, he is leading so much it's just—.

THE COURT: Go ahead and finish your question.

Q. —is there any way you can tell the Defendant is or is not telling the truth? Before you answer I would like to respond, Your Honor, the question does not indicate that I am looking for a particular answer.

THE COURT: Yes, the question is proper. You may answer it, Doctor, if you remember what it was.

A. If I understand the question, if somebody comes in and tells you something is there any way you can know whether he is telling you the truth or not. And the answer to that is if you have some other way that you can [938] compare what he tells you with what actually happened then you can know.

Q. Let me rephrase the question, Doctor. If your evaluation is based solely and alone upon what the Defendant tells you, solely and alone on what the Defendant tells you, is there any way to tell whether he is telling the truth or not? A. If he consistently tells you one and the same story then there is no way you can tell whether it is the truth or not. If it is internally consistent, that is if it is always the same then you can't tell whether it's the truth or not. If he tells two different stories, you know, then one of them is not right. But if it's always the same you can't tell whether it is the truth or not.

Q. Can a person know whether he has or has not done something if he had amnesia at the time of the event? A. If a person has amnesia, they don't remember what they did and they can't know what they were doing during that period.

[939] * * * Q. If a person has true amnesia is there any way that he can honestly answer the question as to whether he did or did not do something during that period of amnesia? A. If he doesn't know what he was doing during that time he can't say, "I did it," or, "I didn't do it."

Q. Doctor, is there any medication that will make a person give up amnesia, whether it be real or faked? A. At a hundred percent level, no.

Q. What is the purpose of hypnosis and [940] truth serum in psychiatry? A. There are a great number of uses of hypnosis. Truth serum is used primarily to relax inhibitions is a way of saying it. It doesn't mean much to other people—it's like—well, I expect you are familiar with people who have had operations and in the process of recovering from the anesthesia they become wild and talk a lot and talk out of their head and they don't know what they are saying. And you have known people who get drunk and who like to talk while they are drunk. When you give truth serum you put a person in a state where they are really not completely aware of what they are saying and you stimulate them and get them to talking in the hopes that they will tell you something that they would not otherwise tell you and they—you have no guarantee that what they tell you is the truth. You just hope to get them to talking because perhaps you can get something that will lead you to what the truth is.

Q. What is your feeling upon the usefulness of hypnosis and truth serum? A. I have used both in the past but I, you know, don't consider them of enough value that I continue to use them.

Q. Will they cause a person to tell the truth? [941] A. No, sir.

Q. Was your evaluation such that you could have an opinion as to whether Defendant Clark knew right from wrong on December 30th, 1978? A. Yes, sir.

Q. What about on any other date prior to and after that, is your opinion such that he would know right from wrong? A. Yes, sir, my opinion is he knew right from wrong on that day, before then, and after that.

Q. Can you tell us if his background is consistent with a mental disease or disorder? A. I don't know exactly what you mean when you say background. You can start with his childhood and come on forward.

Q. Did you find any period of mental illness from his childhood up until that time? A. No, sir.

Q. Doctor, if in fact— A. Pardon me. Once again you get to that question you asked me about before about mental illness. I'm going to have to say there was a diagnosis that I could use that is in the diagnostic and statistical manual.

Q. But was that such it would have prevented the Defendant from lacking a substantial capacity [942] to appreciate the wrongfulness of his conduct— A. No, sir.

Q. —or to conform his conduct to the requirement of law? A. No, sir.

Q. Doctor, assuming for the moment that the Defendant committed the crime that he is charged with, is it your opinion that if five policemen were standing at the scene immediately before it happened that he would or would not have committed this crime? A. He would not have done it.

• • • Q. Doctor, the two tests again are whether he appreciates the wrongfulness of his conduct or whether he is unable to conform his conduct to the requirement of law. Now, did you find anything wrong with the Defendant that would prevent him from being able to do those two things? A. No, he was able to do those.

[943] • • • Q. And if he committed this offense whether anyone was or was not present, he would have known it was wrong at that time? A. Yes, sir.

Q. Doctor, I will pose a hypothetical to you. If an average person of Stanley Clark's size and stature consumed six six-packs of beer to seven six-packs of beer and a half a pint of vodka in one day's period of time, what effect would that have upon his ability to reason and to think or what effect at all would that have upon him? A. Six six-packs of beer?

Q. And possibly seven six-packs of beer. A. That's forty-two beers and that is about, roughly thirty-two pints, which is about sixteen quarts, which is about four gallons. Fluidwise, it's pretty hard simply to drink that much fluid in the course of a day. In terms of the alcohol, about six percent alcohol which is twenty-eight, somewhere between twenty-eight and thirty ounces of alcohol is the equivalent of two quarts of whiskey. If you drink two quarts of whiskey in the course of a day you're approaching the

lethal amount of alcohol. With that amount of fluid plus that amount of alcohol, you would be extremely sick.

Q. Is it your opinion that that would be physically impossible to do? [944] A. Well, I can't say it's impossible but it seems very unlikely and it would make you extremely sick.

Q. If someone told you that they had done that would you find that as a factor you could believe? A. I would doubt that very strongly.

Cross Examination

By Mr. Scott Daniel:

[945] * * * Q. And Dr. White and Dr. Griffin might very well disagree with you on an evaluation and an opinion as to an illness or competency of somebody, might they not? A. Yes, sir. When we got down to talking about the information which we had and things like this, we would be very likely to agree on the grounds that we started from but our final interpretation at least a third of the time would be different, we would disagree with each other.

Q. And that is simply a matter of the fact that as a professional you have to make your own independent judgment based on what you think and based upon your own [946] experience and skill and so forth and not just what somebody else says; is that right? A. Yes, sir.

Q. You did that and you gave the best opinion you could honestly give, didn't you? A. Yes, sir.

Q. And you would presume they would do the same thing, would you not? A. Yes, sir.

Q. And if there is a difference it's just a difference of professional opinion, isn't that correct? A. Yes, sir.

• • •

[949] • • • Q. That is certainly true, isn't it. So what you base your evaluation on is talking with the man himself; isn't that principally what it is? A. Yes, sir, plus watching him and listening to him.

Q. You have to watch and observe and use your own background and skills and knowledge and watching how he reacts to things and observations as to how he handles himself and these type of things; is that what you're saying? A. Yes, sir.

Q. And that is the way psychiatrists, Dr. White and Dr. Griffin or anybody else, would evaluate; is that correct? A. Yes, sir.

Q. Now, when you went through that, as I understood what you were saying, you talked with Mr. Clark one afternoon for you said maybe an hour and a half or something like that? A. Approximately that length of time, yes, sir.

Q. And maybe ten minutes the next day when he came back? [950] A. Yes, sir, we stood actually in the entrance to my office and talked very briefly. I checked one or two things and gave him essentially the report of my evaluation so he would understand what I would say if I were called into court.

Q. And I believe in your evaluation you spent considerable time in advance of talking with Mr. Clark talking with Police Officers Chrisham and Galloway; is that correct? A. Yes, sir, they came in and spent forty-five

minutes to an hour giving us a rather lengthy account of the time from when they—I don't know whether you call it arrested him but from when they stopped Mr. Clark which was like somewhere around midnight until about six-thirty or seven o'clock in the morning. They gave us a lot of details about that time. They gave us some other information about things which had occurred before that, background history, but it was all factual sorts of information that they had gathered in the process of their evaluation.

Q. Or at least it was their view of the information: is that correct? A. (Witness nods in the affirmative.)

Q. In other words the way they see it and the way I or the jury see it might very well be different? [951] A. That is quite true.

Q. So they gave you the information they had or the information that they thought was pertinent to this issue as background information; is that what it was? A. They gave me essentially data so that I could know if Mr. Clark was telling me the same thing that he had told them before. The other thing I had was part of Dr. Griffin's letter to you in which he described his evaluation of Mr. Clark. Part of that letter I don't have, but we had essentially the factual information that was something that I could listen to and compare with what Mr. Clark was telling me.

Q. Why is it important to compare? A. Well, getting back to the question Mr. Dotson raised earlier, if a person consistently says the same thing and if other people say the same thing then it is very likely that is the truth or close to it, particularly if the two people are looking at it from a different standpoint.

Q. Now, was what was said by Mr. Clark and what was said by the police officers as to those particular things consistent? A. Yes, sir, particularly the part from twelve o'clock until—from midnight until six-thirty or seven a.m. their stories were very much the same.

Q. Did you find Mr. Clark to be cooperative [952] with you? A. Yes, sir.

Q. And I believe he answered every question you had and in your opinion didn't appear to be holding back anything, did he? A. No, sir.

Q. And I believe you indicated before that your opinion might differ or would differ one-third of the time, something like that, and this is based upon just a difference in doctors and their views of things, their background, their experience, and whatever is involved; is that correct? A. If I understand your question to be about a third of the time we disagree, yes, sir.

Q. And that doesn't mean that if you disagree one or the other of you is incompetent or not capable as a member of the profession, does it? A. No, sir, it just means that we disagree.

[953] * * * Q. I believe you indicated that the purpose of using these truth serums and hypnosis is to attempt to put a person in a state where he is not aware so that he might tell you something he wouldn't tell you without the administration of the serum; is that correct? A. That is true.

Q. In other words, to try to draw out of him something he might be holding back or that he might be keeping from you? A. That's true.

Q. You can't guarantee that is a hundred percent effective but that is the reason why you use it, to [954] try to do that. A. Yes, sir.

Q. To try to get at the truth, in other words? A. Yes, sir.

Q. I don't believe Mr. Clark was hospitalized by you, was he, other than to take the test? He wasn't admitted to the hospital? A. No, sir, this was done on an outpatient basis.

Q. And I believe you told me on the phone that your reason for saying that you didn't feel that he had amnesia was because you felt like since he related the events, that he was truthfully relating the events to you as he recalled; is that correct? A. He gave me an account of the day and the evening and he stated very specifically that this was where he was and this was what he was doing and that he knew, he said he knew where he was and what he was doing. If I accept that, then there was no time period in which he did not know what he was doing. You know, he says there was no time period in which he did not know what he was doing.

Q. So if another doctor hearing that same thing disagrees with you, that's just a professional difference of opinion, isn't it? Taking the same set of facts and [955] saying that they think that something was repressed or he does not recall or does not remember? A. Well, the problem is that a person with amnesia will say, I don't know what I was doing from this time until that time. He says, this is where I was and this is what I was doing. If you accept that, then you can't say—there is no way to say—that he had amnesia for that period.

Q. I believe if another doctor disagreed with that and felt like even though he relates where he was he had suppressed it and kept this to himself and does not remember it happened, you would disagree with that? Is that what you're saying? A. I'm very sorry, I didn't understand your question.

Q. I take it that you would just disagree with another doctor who believes that a person can in fact relate where they recall having been but suppress memories of specific things during that period? A. I would disagree, yes, sir.

Q. So this is another one of those things in the profession that people disagree about? A. Yes, sir.

Q. And I believe, though, that you told me—and I would like to get this as close as I can so I will have [956] it—"He didn't tell me anything I felt like were lies. He did not withhold anything which would be particularly detrimental. His story was that he had nothing to hide. He seemed to be cooperative, trying to answer everything." A. That was the appearance that he gave me. He didn't give me any reason not to believe him.

Q. I believe I also asked you about whether or not you felt he was telling you the truth and I believe you stated, did you not, "The events as described by the police officers that night and the events as described by him were the same. The events described are the same and that convinces me he is telling me the trtuh. Where I have got something that I know and where I have two accounts and they're the same essentially, that somebody is telling the truth." Is that not what you said? A. Yes, and certainly for that period, from twelve to six-thirty—[Bench conference].

[957] * * * Q. I believe, Doctor, that you told me specifically that you were convinced from what he told you that—"That convinces me he is telling the truth." Those are your exact words, are they not? A. When you're talking about that period from twelve to six-thirty, the answer is yes. And then when you put together the rest of the story, he didn't tell me anything that was inconsistent. And based on that I had no [958] reason not to accept what he was telling me.

Q. All right, what I'm trying to say, Doctor: Did you not tell me in your professional opinion as best you could evaluate it and in your own opinion that you felt that the Defendant was in fact telling the truth?

* * * Q. Isn't that precisely what you told me, that you felt like the Defendant was telling the truth and you saw nothing whatsoever to indicate to the contrary? A. I did not have any reason not to accept what he told me as the truth. I had no way to be sure that it was, but I didn't have any reason not to accept it as the truth either. And if I had reason to accept the rest of the night, based on that I accepted it.

* * *

[962] * * * Q. Let me get back to specifically where we were here. We were talking about the opinions that you gave and the opinions discussed with me. Now, as I understand what you're saying, your opinion is that the Defendant, that is Mr. Clark, when he came for your evaluation and you talked with him you did not find him to be incompetent at the time the acts were committed by whoever committed them, let's put it that way; is that correct? A. Yes, sir.

Q. Now, and I understand from what you're saying that the accused in every way that he could cooperate with you fully and did everything that you asked him to and answered every question you asked him to answer as fully and completely as you requested him to do; is that fair? A. Yes, sir, he cooperated with us and when we asked him a question he gave us the answer.

Q. All right, was there anything that you [963] asked him to do that he in any way refused or failed to cooperate with you? A. The only time there was any problem at all was the evaluation was to start one day earlier than it did, but that was apparently because he was ill, that was the report that we received. He came in and he spent the time there that we needed and he came back the next day and did the tests that we wanted done in order to complete our evaluation.

Q. That's what I mean. In other words, he did everything that you would ask him to do and didn't appear in your opinion to be holding back anything or to be refusing to cooperate in any way? A. That is correct, yes, sir.

Q. And with regard to your opinion as to his condition, I believe you did say that it's that opinion, when you get down to that opinion—that's where the Attorney General asked you were there areas of disagreement in which one psychiatrist and another would have a different opinion based on different backgrounds and techniques and that type thing; is that correct? A. I'm sorry, I don't understand exactly what your question is.

Q. I'm just saying, when it comes right down to it, you just disagree with Dr. Griffin and Dr. White; is [964] that correct? A. Yes, sir.

Q. And conversely they disagreed with you also. And the only background information that you had other than what was elicited from your interview with Mr. Clark was what the police officers gave you; is that correct? A. Yes, sir. That's not very dissimilar from the evaluation which we do and which we solicit information before people come to the Forensic Service Division to get as much information as we can so that we can compare it to what the person tells us after he gets there. If we don't have any information at all we have to work only with what the person tells us. If we can get other information it is helpful.

CLOSING ARGUMENT

By General Henry:

[967] * * * I further have reason to believe that his Honor will instruct you that all killings or all murders are presumed to be malicious unless rebutted.

* * *

[992] * * * Yesterday afternoon two psychiatrists testified for the Defendant as to his mental competency. One of them, Dr. Griffin, stated that regardless of the number of factors Gen. Dotson asked him about he wouldn't change his opinion. He wouldn't change his opinion. That won't make me change my opinion; I could be wrong but I'm not. I won't change my opinion.

Dr. White candidly presented that he could be wrong in his diagnosis if he didn't know all of the factors. They both testified about this medicine that they gave the Defendant to make him tell what had happened in the examination to get to what was going on. And Gen. Dotson asked them both and they testified about what they did when they examined the Defendant to determine his [993] mental competency. He asked them both, "Would the factor that he tried to elude the police change your opinion?" And both of them said, "Well, no, not really," or something like that.

So apparently they didn't know that fact. So the question is how well did those drugs work.

I submit to you that their testimony under close cross-examination did not show the Defendant really suffered from a mental illness so that he did not understand right

from wrong or so that he could not do what was right on the night of December 30th. Dr. White even testified that the inability he was talking about lasted only a couple of hours. That's strange, I submit to you. But you are the weighers of the testimony and the weighers of the facts.

The prosecution presented in rebuttal lay people who knew the Defendant and had known him for some period of time and they didn't notice anything different about him, anything wrong with him.

They presented Terry Hill, Mr. Pittman, Stanley Browning, the brother of the deceased, Eddie Peel, and Lindy Woodson, the owner of the store in the community.

And the State presented Dr. Pieper. I submit to you that Dr. Pieper's testimony showed that the Defendant did not have the mental illness at the time this [994] occurred that would keep him from understanding right from wrong and knowing right from wrong or would allow him as I believe the Court will instruct you, a person is not responsible for ciminal [sic] conduct if at the time of such conduct as a result of mental disease or defect they lack substantial capacity to either appreciate the wrongfulness of their conduct or to conform their conduct to the requirements of the law.

I submit to you Dr. Pieper showed that the Defendant didn't come within that category.

CLOSING ARGUMENT

By Mr. Scott Daniel:

[996] * * * He said that I had said in the opening that the Defendant was suffering from total amnesia that night. What I said to you was exactly what Dr. White and Dr. Griffin testified to you. And I wrote my opening argument down so I would make sure when I came to this point that I knew what I was saying and I wouldn't have to get up here and off the cuff try to read back and recollect. What I said to you in my opening statement was,

> If as unlikely as it may be the Prosecutor [sic] were able to establish to your satisfaction that Stanley Clark did commit the acts alleged we will show you by psychiatric experts that Stanley Clark has no recollection of participating in any acts such as is charged against him.

That was testified to by three psychiatrists, including the State's own psychiatrist. Now is that the way it was put to you in the proof, the way that the evidence was recited?

* * *

[998] * * * He says that Mr. Smith said the same thing. What did Mr. Smith say to you? He even swore in this witness stand at this time that the children didn't. He didn't change his testimony from before because even before he testified, no, the children just said, "They shot my mommie." "They have guns; they are fighting." And Mr. Smith said that they didn't say anyone. Mr. Smith has never even contended that they said anyone. The Attorney General will say, well, they must have said after they got home or something, but, no, Mrs. Smith said on

the witness stand in regard to a cross-examination question by [999] Mr. Dotson himself for the prosecution, no, she said it while we were in the car, while Mr. Smith was there. And Mr. Smith told you, swore to you that they never said who did it.

• • •

[1038] * * * Well, if that's true—and I don't know that it is—they can't say that it's true in this case. Amnesia is not a defense. If you did something the mere fact that you can't remember it is not a defense, but it certainly explains why you cannot remember, cannot give your explanation of it, because you don't know what it is.

• • •

[1040] * * * This has placed a greater burden on me I guess than anything I have ever run across, to try to defend somebody when you can't even find out, when you can't get inside them. You try everything in the world you know and [1041] you come back to the same point everytime. You try the truth serums, hypnosis, everything there is, and you end up at the same point. I can't tell you what happened; Stanley can't tell you what happened; there's no way we can say to you what happened. But we can say to you one thing: You certainly haven't heard what happened by any competent or any convincing or any satisfying proof in this courtroom.

You heard Dr. White testify that after all he went through that in all of his twenty years he had not seen a case that he would have thought any more was telling the truth than in this one, I think he said one in ten thousand chances or whatever as far as Stanley's re-

action to it, but you have to weigh that and think of what kind of proof. You can't convict somebody because he can't remember what he did just as the fact that he doesn't remember what he did doesn't mean he doesn't do it. I will have to concede that to you. But by the same token, you can't convict him unless he did it. It's just that simple. The simple fact that he has got mental problems —and this Dr. Pieper said, Stanley does have mental problems—he didn't think he was insane at the time as the other two doctors did—but he did say if, based on the history and the background and the facts that they knew —Dr. Pieper didn't bother to ask. The only information he had about Stanley was what he got from the police officers who sat down there from forty-five minutes [1042] to an hour telling them what they wanted him to know. That's the kind of information that the prosecution provided for their doctor.

Now, you heard what Sylvia Leathers [sic] testified to, about how Stanley didn't seem like he knew what he was doing, he was upset, he said one thing one moment then another and then he'd turn around and he'd be talking about something else and he'd say I love her and whip her and although he made a threat to her he said, I can't eat, I can't sleep, I see the Vietnamese coming at me like a herd of sheep and all of these kinds of things.

[1043] * * * But think of a mind that's depressed and has grown up over the years depressed, can't eat, can't sleep, throwing up, crying, this type of thing, and think of the kind of influences that when something happens and gets to you that that can have on a person who is that type of emotionally ill. It is just obvious I think to you and I think it would be to anybody what would happen there.

[1044] * * * Now, where the truth lies and it is I can't honestly tell you, I don't honestly know, but I do know you have not heard the truth from that witness stand. You haven't heard hardly a witness come in here who didn't say something just totally self-serving and contradictory. You haven't heard a witness come in here who could testify about anything material, anything real or truthful that was not at variance with what some other witness said.

• • •

[1046] * * * Now, they will tell you about circumstantial evidence. Circumstantial evidence is those things that we [1047] talked about in jury selection, circumstances from which you can reach an inference. But there's one thing about circumstantial evidence—circumstantial evidence has to lead to only one reasonable conclusion or you cannot accept it.

* * * Now, you can't make me prove that Stanley is innocent. I don't think that I can do that—I don't think there is anyway as long as I can't even find out if he was there. If he was there he has no recollection of it so I can't find the facts.

• • •

[1049] * * * Now, the Judge will instruct you as to reasonable doubt. When you go into the jury room you have to reflect upon this. I submit to you if you have a reasonable doubt about any aspect of this case that is material and that the prosecution has to prove, then it's [1050] your duty to find the Defendant, Stanley Clark, not guilty.

[1051] * * * Finally there is the fifth shot at the scene. She said, "They have guns; they are fighting." They. Somebody is there fighting. There was another shot found at the scene that didn't fit this one because there supposedly were two shells left in the gun. If it was left that way—they said they could have jammed another one in, but it's only reasonable to assume that that's all there was. But there was a fifth shell found there that they didn't send off and the police lost.

[1052] * * * The psychatric [sic] testimony. Of course if didn't [sic] do it you don't have to worry about what his mental state was, but I submit to you that even though I don't believe there is any possible way on this evidence that you could find him guilty, even if you did I submit to you two psychiatrists have come in here who have done every type of tests that can be done to determine and they say that if he did this thing he wasn't competent at the time. Can you beyond a reasonable doubt reject their testimony in favor of Dr. Pieper's testimony? As honest as Dr. Pieper is being with you, can you put this man in prison based upon that? Now, it's the prosecution's burden to prove sanity beyond a reasonable doubt, not my burden to prove something else.

The judge will charge you in a few moments the law that if the Defendant for [sic] the State's evidence raises a reasonable doubt as to the defendant's sanity, such evidence relieves the Defendant of further proof on the issue and shifts the burden of proof to the State. That evidence has [1053] been presented. Can you say to a moral certainty, can you tell me that the State has overcome that burden by their testimony?

REBUTTAL CLOSING ARGUMENT

By General Dotson:

[1056] * * * Back to his defense. His defense, first, is I did not do it. The second defense is, if I did it I was mentally ill and didn't know what I was doing. Let's see how he proved that. He presented Dr. Griffin who said his mental illness was a continuing proposition, he has had this depressive neurosis for a great period of time. And then what did Dr. White say? Dr. White said his mental condition was not a continuing proposition, that he did not have a mental illness before the incident and not after it, just only for a few hours of this alleged incident.

MR. DANIEL: If your Honor please, I have to object to that. That is not what the testimony was. He said he was still ill. He said he was not insane, but he specifically made that distinction.

THE COURT: The jury is sole judge of what the testimony was and the jury will decide that.

GEN. DOTSON: And as I thought I told [1057] you from the outset, the very first day, what I say is not evidence. What Mr. Daniel says is not evidence, it's just our interpretation of that. And I'm going to give you my interpretation, and as the Court says, you can make your decision as to whether my interpretation is right or whether what Mr. Daniel told you about what they said is right.

The second thing, Dr. Griffin said the Defendant knew right from wrong. That's not an indication of a mental illness. But he said he would not have committed the crime if five policemen were present, then admitted that Stanley could conform his conduct to the requirement of law. Do

you not recall him saying that? Don't answer it, but you know and I know.

Under the instructions the Court will give you I believe you will find this: A person is not responsible for criminal conduct if at the time of such conduct as a result of mental disease or defect, meaning a mental disease or defect in and of itself will not excuse a crime—he lacked substantial capacity either to appreciate the wrongfulness of his conduct—and both of them said he knew right from wrong so that did not apply.

But the second question they raised or the second issue on which they're hanging their hat is "or to conform his conduct to the requirement of law." Now, that's what Mr. Daniel is insisting that Stanley Clark could not [1058] do, could not conform his conduct to the requirement of law. But what was it that Dr. Griffin, his own doctor, said? He could not have committed the crime if five policemen were present. He then admitted that Stanley could conform his conduct to the requirement of law. So you can just pretty well disregard what Dr. Griffin had to say about it. If you're not going to believe him you can disregard it, but if you believe him you've got to disregard what Dr. White said.

And then what did Dr. White say? Dr. White said the Defendant did not know right from wrong. Again, his own two doctors were mistaken, they did not agree upon these facts. Then when told what Dr. Griffin had said, you remember he said that he didn't understand and then he changed his answer. Further, what did he say? He said he would have committed the crime if five policemen were present. He then stated that Stanley could not con-

form his conduct to the requirement of law. One says he could and one says he couldn't.

The third expert witness in this case came in here and told you that under the same set of circumstances one-third of the doctors would disagree. I'm going to show you why I believe you will agree that he was right. Dr. Pieper said that he did not find a mental illness that would prevent Stanley Clark from being able to conform [1059] his conduct to the requirement of law and he stated before that that one-third of the doctors would disagree. So let's see where we stand on his proposition that one-third would disagree. You had one doctor that said he could not conform his conduct to the requirement of law and you had two that said he could, which bears out what he said. Two doctors, the Defendant's own doctor. And if you will recall, the good doctor didn't want to admit it but finally he hung his head and said, yes, he could conform his conduct to the requirement of law, indicating that two out of the three doctors disagrees [sic] with Mr. Daniel's defense of temporary insanity.

Mr. Daniel questioned the other witnesses about what they said on or about February. But do you recall when the Defense of insanity was first interposed? June 4th. The question of insanity wasn't raised until then. As I contend, the Defendant's defenses are clearly inconsistent. He says, one, I didn't do it, but if you prove I did, I'm going to claim that I was crazy or mentally insane and didn't know what I was doing.

* * *

[1061] * * * And again if you will recall Sylvia Hillis, testifying about the threat that Mr. Clark made, gave you

about five or six things that she had noticed that were wrong with the Defendant. Mr. Daniel accused the State of telling Dr. Pieper what the facts were, but do you recall when Dr. Griffin told you the symptoms that he noticed? Right down the line, the very same things that Sylvia Hillis told you. I don't know how she could have heard the same things that an expert psychiatrist could unless she was pretold by someone what the situation was.

Now we get to the heart of this matter: The Defendant does not have a temporary insanity defense. I will give you another illustration as to whether there were differences between the Defendant's own two doctors. Dr. Griffin said medication got Stanley confused, affected his ability to reason about his actions and whereabouts after he told about his trip to Shelbyville and couldn't recount his activities. What did Dr. White say? The same medication produced a realistic and truthful response and helped the Defendant describe where he was. But when Dr. Pieper testified he said the fellow was able to describe everything that he did that night, and when he confronted Stanley Clark with the fact that the other doctors said he had amnesia he [1062] disagreed with it, told Dr. Pieper he knew everywhere he was. But the other two doctors told you Stanley Clark had a reason for not telling the truth and that was that if he did it would open the gates to the penitentiary. I submit to you it's for that reason that he maintained throughout he didn't know where he was and didn't know what he did.

* * *

[1069] * * * Again, as Mr. Daniel requested, decide the case on the facts as they have been presented, not upon collat-

eral matters. Look at all of the witnesses. The Defendant says he was temporarily insane. Who would have known that better than the Defendant's family? He has got brothers. Mr. Daniel had those witnesses subpoenaed. Did any of those tell you he had anything wrong with him? He has a father who has been in the courtroom. Did he tell you anything was wrong with his son? Did anyone that would know these facts that Mr. Daniel said the State's witnesses didn't know—did you have benefit of any of those witnesses? Not one [1070] iota of proof from anybody besides two doctors that didn't agree and they agreed that they were up here because of being paid.

[1071] * * * It's the State's position that this was a willful, deliberate, malicious and premeditated murder. So there will be no misunderstanding, willful just means of purpose, that is that the act which caused the deaths was intended to have that result. Deliberate simply means a cool purpose. Malicious means an evil spirit, and heart bent on mischief regardless of social duty. . . . You are justified in finding willful, deliberate, malicious and premeditated murder. There has been no proof whatsoever to the contrary, that this was not a first degree murder.

TRIAL COURT'S CHARGE

[1075] Members of the jury, the Defendant, Stanley Barham Clark, is charged in count one of the indictment with the crime of murder in the first degree, alleged to have been committed upon the body of one Charles Browning, on the 30th day of December, 1978, in Rutherford County, Tennessee.

The Defendant, Stanley Barham Clark, is charged in count two of the indictment with the crime of murder in the first degree, alleged to have been committed upon the body of one Joy Faulk, on the 30th day of December, 1978, in Rutherford County, Tennessee.

To this indictment the Defendant, Stanley Barham Clark, pleads not guilty to both counts and a plea of not guilty operates in law as a denial of every allegation of guilt contained in the indictment and of every proposition of fact that is necessary to make out the cases of which [1076] which [sic] this Defendant is charged and thus form the issues for your consideration and determination.

The evidence and arguments in these cases have been completed, and it is my duty now to instruct you as to the law. The law applicable to these cases is stated in these instructions, and it is your duty to carefully consider all of them. The order in which these instructions are given is no indication of their relative importance. You should not single out one or more of them to the exclusion of another or others but should consider each one in the light of and in harmony with the others.

• • • The State must prove beyond a reasonable doubt all of the elements of each crime charged, that the crime, if in fact committed, was committed by the Defendant in Rutherford County, Tennessee, and that it was committed before the finding and returning of the indictment in this case.

[1077] • • • Furthermore, each charge of murder in the first degree includes charges of the lesser offenses of murder in the second degree, voluntary manslaughter and involuntary manslaughter. To each of the charges and to

the offenses included thereunder the Defendant has entered a plea of not guilty, thus presenting the issues for your determination.

[1078] You enter upon this investigation with the presumption that the Defendant is not guilty of any of these offenses, and this presumption stands as a witness for him until it is overcome and overturned by competent and credible proof, which satisfies your minds beyond a reasonable doubt of his guilt. It is, therefore, incumbent upon the State, before you can convict the Defendant, to establish to your satisfaction, beyond a reasonable doubt, that the crime as defined in these instrudtions [sic] was in fact committed, in Rutherford County, by the Defendant, under such facts and circumstances as would make him guilty of one of the offenses embraced in the indictment.

By reasonable doubt is not meant just any imaginary doubt that may arise in one's mind, but it is that doubt engendered by an investigation of all the proof and which prevents your mind's resting easy upon the certainty of the Defendant's guilt. Absolute, or mathematical, certainty of guilty is not required to convict of any offense, but moral certainty is required, and this certainty is required as to every proposition of proof requisite to make out the case against the Defendant and as to every grade of offense charged or embraced in the indictment.

* * *

[1082] * * * The Defendant has not taken the stand to testify as a witness, but you shall place no significance on this fact. The Defendant is presumed innocent, and the burden is on the State to prove his guilt beyond a reasonable doubt. He is not required to take the stand in his own be-

half, and his choice not to do so cannot be considered for any purpose against him, nor can any inference be drawn from such fact.

[1083] * * * As to each of the two first degree murder charges, you have six possible verdicts, depending upon how you find the facts:

(1) Not guilty,

[1084] (2) Not guilty by reason of insanity,

(3) Guilty of murder in the first degree,

(4) Guilty of murder in the second degree,

(5) Guilty of voluntary manslaughter, or

(6) Guilty of involuntary manslaughter.

You must find two separate verdcits [sic]: One as to the charge of the murder of Charles Browning, and one as to the charge of the murder of Joy Faulk.

I shall now define murder in the first degree, murder in the second degree, voluntary manslaughter, and involuntary manslaughter.

Any person who willfully, deliberately, maliciously, and with premeditation kills another person is guilty of murder in the first degree.

For you to find the Defendant guilty of murder in the first degree, the State must have proven beyond a reasonable doubt:

(1) That the Defendant unlawfully killed the alleged victim.

(2) That the killing was malicious: That is, that the Defendant was of the state of mind to do the alleged wrong-

ful act without legal justification or excuse. If it is shown beyond a reasonable doubt that the alleged victims were killed, the killing is presumed to be malicious in the absence of evidence which would rebut the implied [1085] presumption.

(3) That the killings were willful: That is, that the Defendant must have intended to take the life of the alleged victim.

(4) That the killing was deliberate: That is, with cool purpose.

(5) That the killing was premeditated. This means that the intent to kill must have been formed prior to the act itself. Such intent or design to kill may be conceived and deliberately formed in an instant. It is not necessary that the purpose to kill pre-exist in the mind of the accused for any definite period of time. It is sufficient that it preceded the act, however short the interval.

The mental state of the accused at the time he allegedly instigated the act which resulted in the alleged deaths of the deceased must be carefully considered in order to determine whether the accused was sufficiently free from excitement and passion as to be capable of premeditation. Passion does not always reduce the crime below murder in the first degree. Since a person may deliberate, may premeditate, and may intend to kill after premeditation and deliberation, although prompted and to a large extent controlled by passion at the time. If the design to kill was formed with deliberation and premeditation, it is immaterial that the accused may have been in a passion or excited [sic] when the design was carried into [1086] effect.

If you find from the proof beyond a reasonable doubt that the Defendant is guilty of murder in the first degree, you will so report and your verdict in that event shall be: "We, the jury, find the Defendant guilty of murder in the first degree." If you so find, then it shall be your duty after a separate sentencing hearing to determine whether the Defendant will be sentenced to death or life imprisonment, but you will not consider punishment for these offenses at this time.

If you find the Defendant is not guilty of murder in the first degree, or if you have a reasonable doubt as to his guilt of these offenses, then in that event you must acquit him of these offenses.

Any person who unlawfully kills another person with malice aforethought, either express or implied, shall be guilty of murder in the second degree.

For you to find the Defendant guilty of this offense, the State must have proven beyond a reasonable doubt that: (1) The defendant unlawfully and willfully killed the alleged victim; and (2) The killing was malicious.

Malice is an essential ingredient of this offense, and it may be either express or implied. A case of homicide cannot be murder unless at and before the killing the wicked intent, constituting malice aforethought, exists [1087] in the mind of the slayer. Malice is an intent to do any injury to another, a design formed in the mind of doing mischief to another.

Express malice is actual malice against the party slain and exists where a person actually contemplates the injury or wrong he inflicts. Implied malice is malice not against

the party slain, but malice in general, or that condition of mind which indicates a wicked, depraved and malignant spirit, and a heart regardless of social duty and fatally bent on mischief.

Implied malice may be found to exist where the wrongdoer did not intend to slay the person killed but death resulted from a consciously unlawful act done intentionally and with knowledge on the wrongdoer's part that the act was directly perilous to human life. In this event there is implied such a high degree of conscious and willful recklessness as to amount to that malignity of heart constituting malice.

If one person, upon a sudden impulse of passion, without adequate provocation, and disconnected with any previously formed design to kill, kills another willfully and maliciously, such killing is unlawful and is murder in the second degree.

All homicides are presumed to be malicious in the absence of evidence which would rebut the implied presumption. Thus, if the State has proven beyond a reasonable [1088] doubt that a killing has occurred, then it is presumed that the killing was done maliciously. But this presumption may be rebutted by either direct or circumstantial evidence, or by both, regardless of whether the same be offered by the Defendant, or exists in the evidence of the State.

Likewise, if a deadly weapon is handled in a manner so as to make the killing a natural or probable result of such conduct, then there is raised a presumption of malice sufficient to support a conviction of murder in the second degree unless it is rebutted by other facts and circumstan-

ces. A deadly weapon is any weapon or instrument which from the manner in which it is used or attempted to be used is likely to produce death or cause great bodily injury.

Malice cannot be inferred from mere deadly intent. Because the deadly intent may be justifiable under the law, as where one willfully kills another to save his own life or to save himself from great bodily harm and the danger is imminent and immediate, or when the intent to kill is produced by anger, for if it were sudden and upon reasonable provocation the killing might or might not be manslaughter, but it would not be murder.

The question of whether the alleged killing was done with malice is for you to determine from the entire case, and you should look to all of the facts and circumstances developed by the evidence to determine whether the State has [1089] proven beyond a reasonable doubt the existence of malice. If you have a reasonable doubt as to whether the alleged killing was done with malice, then the Defendant cannot be guilty of murder in the second degree and you must acquit him of that offense.

Voluntary manslaughter is the unlawful and intentional killing by one or another, without malice, but upon a sudden heat of passion produced by provocation adequate to obscure the reason of an ordinary man. If the intention and the act are the result of impulse and passion, excited upon sudden and adequate provocation, or being greatly excited upon sufficient cause, and the act is induced by a sudden motive of revenge, the idea of malice is negated, and the killing is voluntary manslaughter.

Killing on a sudden heat of passion, without malice, distinguishes voluntary manslaughter from murder in the

second degree. For you to find the Defendant guilty of voluntary manslaughter, the State must have proven beyond a reasonable doubt: (1) That the Defendant unlawfully killed the alleged victim; (2) That the killing was willful: That is the Defendant intended to take the life of the alleged victim; (3) That the Defendant acted in a state of passion sufficient to obscure his reason; and (4) That the passion was produced by reasonable and adequate provocation.

The provocation that the law deems [1090] reasonable and adequate is one of such nature as would, in the mind of an average reasonable man, stir resentment likely to cause violence, obscure the reason, and lead to action from passion rather than judgment.

Manslaughter is the unlawful killing of another without malice, either express or implied, which may be either voluntary upon a sudden heat, or involuntary, but in the commission of some unlawful act.

Involuntary manslaughter is a homicide committed under such circumstances that it plainly appears that neither death nor bodily harm was intended by the party doing the killing, but that death was accidentally caused by some unlawful act, or by some act not strictly unlawful in itself but done in an unlawful manner and without due caution, and that death was the natural and probable result of such act.

Involuntary manslaughter necessarily negates any intent on the part of the accused to kill another, but does not negate an intent to do the unlawful act or the act not strictly unlawful in itself but done in an unlawful manner and without due caution.

Before the Defendant can be convicted of any degree of homicide, the State must have proven beyond a reasonable doubt that the deaths of the deceased, Charles Browning and Joy Faulk, respectively, were brought about as [1091] a result of the criminal agency of the Defendant: That is, that the deaths of the deceased were due to the unlawful acts of the Defendant.

One who unlawfully inflicts a dangerous wound upon another is held for the consequences flowing from such injury, whether the sequence be direct or through the operation of intermediate agencies dependent upon and arising out of the original cause.

To convict the Defendant, it is not necessary that his act or failure to act be the sole cause, nor the most immediate cause of death. It is only necessary that the Defendant unlawfully contributed to the deaths of the deceased.

Death following a wound from which death might ensue, inflicted with intent to kill, is presumed to have been caused by such wound, and the burden of proceeding by offer of proof is upon the Defendant to show that death resulted from some other cause not attributable to the Defendant. However, while the burden of proceeding any shift, the burden of proof never shifts and is always upon the State to prove beyond a reasonable doubt that the deaths of the deceased were brought about by the unlawful acts of the Defendant.

As part of the plea of not guilty, the Defendant relies on the defense of insanity. You are not to [1092] consider this defense unless you have found that the State has proved beyond a reasonable doubt each essential element of the crime charged.

A person is not responsible for criminal conduct if, at the time of such conduct, as a result of mental disease or defect, he lacks substantial capacity either to appreciate the wrongfulness of his conduct or to conform his conduct to the requirements of the law.

A mental disease or defect is defined as any abnormal condition of the mind which substantially affects mental or emotional processes and impairs behavior controls. Behavior controls refer to the processes and capacity of a person to regulate and control his conduct. The terms mental disease or defect do not include any abnormality manifested only by repeated criminal or otherwise antisocial conduct.

The questions for your consideration are as follows:

1. Was the Defendant suffering from a mental illness at the time of the commission of the crime?

2. Was that illness such as to prevent his knowing the wrongfulness of his act?

3. Was the mental illness such as to render him substantially incapable of conforming his conduct to the requirements of the law he is charged with violating?

[1093] Lay witnesses have testified with respect to their observations of Defendant's appearance, behavior, speech, and actions. Such persons are permitted to testify as to their own observations and other facts known to them and may express an opinion based upon those observations and facts known to them.

In weighing the testimony of such lay witnesses, you may consider the circumstances of each witness, his opportunity to observe the Defendant and to know the facts

to which he has testified, his willingness and capacity to expound freely as to his observations and knowledge, the basis for his opinion and conclusions, and the nearness or remoteness of his observations of the Defendant in point of time to the commission of the offense charged.

You may also consider whether the witness observed extraordinary or bizarre acts performed by the Defendant, or whether the witness observed the Defendant's conduct to be free of such extraordinary or bizarre acts. In evaluating such testimony, you should take into account the extent of the witness' observation of the Defendant and the nature and length of time of the witness' contact with the Defendant.

You should bear in mind that an untrained person may not be readily able to detect mental disease or defect and that the failure of a lay witness to observe abnormal [1094] acts by the Defendant may be significant only if the witness had prolonged and intimate contact with the Defendant.

You are not bound by the opinions of either expert or lay witness. You should not arbitrarily or capriciously reject the testimony of any witness, but you should consider the testimony of each witness in connection with the other evidence in the case and give it such weight as you believe it to be entitled.

In determining the Defendant's mental status at the time of the alleged crime, the jury is entitled to look to evidence of his actions and words before, at, and immediately after the commission of the alleged crime.

The law presumes the Defendant to be sane. Therefore, in the first instance, the State need not introduce any proof of the Defendant's sanity. However, if the evidence adduced either by the Defendant or the State raises a reasonable doubt as to the Defendant's sanity, then the burden if upon the State to establish the Defendant's sanity beyond a reasonable doubt.

If a reasonable doubt has been raised as to the Defendant's sanity, then for him to be legally responsible for his conduct, the State must have proven beyond a reasonable doubt either that he was not suffering from a mental disease or defect, or else that he nevertheless had substantial capacity both to conform his conduct to the [1095] requirements of the law and to appreciate the wrongfulness of his conduct.

If the State has not established these things beyond a reasonable doubt, of if you have a reasonable doubt as to whether, at the time of the commission of the crime, the Defendant, as a result of mental disease or defect, lacked substantial capacity either to appreciate the wrongfulness of his donduct [sic] or to conform his conduct to the requirements of the law, then you must acquit him.

If you find the Defendant not guilty by reason of insanity, the form of your verdict shall be: "We find the Defendant not guilty by reason of insanity." A verdict of not guilty by reason of insanity shall result in the automatic detention of the Defendant in a mental hospital or treatment center, pending further medical and legal findings.

[1096] * * * You have heard evidence concerning the alleged drunkenness of the Defendant at the time of this

offense. You are instructed that voluntary drunkenness is generally no defense to a criminal charge. If a person voluntarily drinks and becomes intoxicated, and while in that condition commits an act which would be a crime if he were sober, he is fully responsible for his conduct. This is so unless his drunkenness has continued for such a long period of time so as to result in settled insanity by the time of the offense. It is the duty of men to refrain from placing themselves in a condition which poses a danger to others.

However, as an exception to this rule, voluntary drunkenness can be a defense to the crime of murder in the first degree, depending upon the fact whether the drunkenness prevented the deliberation and premeditation [1097] essential to constitute the crime of murder in the first degree.

The voluntary drunkenness of one charged with taking the life of another can be looked to only for the purpose of determining whether such drunkenness has so affected the mind of the person so charged that, at the time, he was incapable of forming in his mind a premeditated and deliberate design to kill. But in legal estimation, a drunken man may be guilty of murder in the first degree as if he were sober, if it shall appear from the facts that the killing was willful, deliberate, malicious, and premeditated.

Therefore, it is your duty to consider the Defendant's drunkenness, if any, in connection with all the other facts and circumstances in proof, in deciding whether the act was done with premeditation and deliberation. If you find that the Defendant's drunkenness was to such an extent that he was incapable, at the time, of forming in

his mind a premeditated and deliberate design to kill, or if you have a reasonable doubt as to this question, then you must find the Defendant not guilty of murder in the first degree.

Regarding the offenses of murder in the second degree or any lesser degree of homicide, voluntary drunkenness is no defense and can form the basis of no legitimate inquiry.

[1098] Evidence may have been introduced indicating that the Defendant was suffering from amnesia at the time of the commission by someone of the crime of which he is presently accused. Amnesia is the inability to remember. The failure of the Defendant to remember the details of the alleged crime or to remember any of the facts leading up to and surrounding the commission of the alleged crime is in itself no defense to this charge.

The opinion of the Sixth Circuit Court of Appeals was reproduced in the Appendix to the Petition for Writ of Certiorari. (Pet. App. A-1 - A-6).

The opinion of the United States District Court was reproduced in the Appendix to the Petition for Writ of Certiorari. (Pet. App. A-7 - A-21).

The opinion of the Tennessee Court of Criminal Appeals was reproduced in the Appendix to the Petition for Writ of Certiorari. (Pet. App. A-23 - A-39).